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File: LIN 05 030 51335 Office: NEBRASKA SERVICE CENTER Date: **JAN 29 2007**

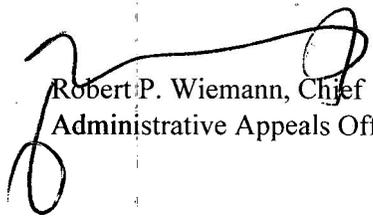
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

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, Nebraska Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of Texas that is engaged in the import and distribution of coffee. The petitioner claims that it is the subsidiary of [REDACTED] located in Brazil. The petitioner seeks to employ the beneficiary as its president and general manager for a three-year period.¹

The director denied the petition concluding that the petitioner did not establish: (1) that the beneficiary will be employed in the United States in a primarily managerial or executive capacity; or (2) that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director erred in overlooking evidence regarding the organizational structure of the U.S. and foreign entities and erroneously concluded that the U.S. company could not support an executive position. Specifically, counsel states that the director only relied on the petitioner's staffing levels and disregarded regulatory requirements concerning an executive who oversees a function." Counsel indicated on Form I-290B that she would send a brief and/or evidence to the AAO in support of the appeal within 30 days. As of this date, the record of proceeding does not contain a brief or evidence submitted by the petitioner or counsel.

On November 7, 2005, the AAO received a supplemental letter from Senator Ron Wyden, which is accompanied by a statement from the beneficiary, and numerous reference letters written on behalf of the beneficiary by his business associates.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

¹ The instant petition is the third nonimmigrant petition filed by the petitioner on behalf of the instant beneficiary. The first petition was filed on May 14, 2003 and denied by the director, Nebraska Service Center on October 22, 2003 (LIN 03 179 53960). The petitioner filed a second L-1A petition on February 19, 2004, which was approved on June 16, 2004 (LIN 04 096 52608). On appeal, the beneficiary states that his application for an L-1A visa at the U.S. Consulate in Sao Paulo, Brazil was not approved.

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The first issue in the present matter is whether the petitioner established that the beneficiary will 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), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The nonimmigrant petition was filed on November 10, 2004. On the Form I-129, the petitioner indicated that it employed two workers as of the date of filing, and stated that it intended to employ the beneficiary as its president and general manager. The petitioner described the beneficiary's proposed duties as:

Overall running of US company aimed at expanding the coffee import business. Responsibility for the growth and expansion of the US company; overall responsibility for entering into contracts and legal agreements with suppliers and distributors of coffee imported from Brazil; oversee import of coffee from parent company.

In a letter dated November 5, 2004, the petitioner further described the beneficiary's duties in the United States as follows:

In the offered position, [the beneficiary] is responsible for all international trade decisions, including the hiring and direction of all trade management and support staff, purchase and sales contract negotiations, and long term planning of the company's management.

Finally, the petitioner submitted a letter from the foreign entity, dated May 1, 2003, which provides the following description of the beneficiary's U.S. duties:

[The beneficiary] will implement and oversee all management operations including import, sales and contracting, distribution, and support operations for the subsidiary office located in the Portland metropolitan area of Oregon while communicating with the Brazilian parent offices under the direction of the Acting General Manager. For the subsidiary office he has responsibility for procurement of all management staff including sales and technical support staff, planning and implementation of goals and policies, and during this initial start-up period he is responsible for delegation of tasks and positions to the staff members including media professionals and marketing researchers. All staff members will be his direct subordinates.

The petitioner submitted its most recent quarterly federal and state tax returns confirming the employment of one worker. The petitioner also provided a "sales commission agreement" made between the petitioner and [REDACTED] under which the latter is provided with a sales commission for all purchases of the petitioner's coffee made by "[REDACTED]". The petitioner submitted a letter, dated September 3, 2003, from the Vice President of Distribution Services and Warehousing, Inc., who confirms

that his company has been responsible for storing the petitioner's inventory in its warehouse, and shipping the petitioner's products according to the beneficiary's instructions.

The director issued a request for evidence on January 4, 2005. The director noted that the position description submitted with the initial petition was too brief and did not include sufficient detail regarding the beneficiary's proposed duties. The director also observed that, as it appeared that the petitioner had only one employee, it is not clear that the U.S. entity currently employs sufficient staff who will relieve the beneficiary from performing the duties required in the day-to-day operation of the business. The director requested a statement from the petitioner describing the beneficiary's intended employment in the United States, noting that it should include specific job duties, types of employees supervised, and the beneficiary's level of authority. The director also requested an organizational chart that lists all employees by name, position title, and duties.

In a response dated March 28, 2005, the petitioner stated that the beneficiary will perform the following duties in the United States:

1. Implement and oversee all management operations, including import, sales and contracting of coffee product, overseeing distribution and support operations for the subsidiary office located in Portland, while communicating with the Brazilian parent offices;
2. Hire all management staff and administrative and warehouse staff;
3. Plan and implement company goals and policies;
4. Delegate administrative tasks to staff members;
5. Negotiate sales agreements for coffee product with wholesalers and roasters;
6. Meet with potential customers; marketing researchers and media personnel;
7. Attend trade conferences;
8. Execute contracts on behalf of both companies;
9. Direct expansion of company as required, review legal agreements regarding company agreements; leases; export and import documents; etc.

The petitioner stated that the beneficiary supervises a warehouse employee, a sales representative, [REDACTED] who works on a commission basis selling coffee through [REDACTED] and a management consultant, [REDACTED]. The petitioner stated that the company will hire additional administrative and managerial staff as the company expands, but requires the beneficiary's presence on a full-time basis to further the expansion.

The petitioner attached an employee list which shows the beneficiary as president, the management consultant, [REDACTED], as vice president, and [REDACTED] as a sales representative. The petitioner indicates that its warehouse, sales, domestic freight, and international freight and customs are provided on a contract basis. The petitioner did not provide the requested job duties for the claimed employees and contractors.

The petitioner submitted a second sales commission agreement made between the U.S. company and [REDACTED]. Although the document indicates that the agreement was made on November 11, 2004, the duration of the agreement is stated to begin on September 1, 2003. The agreement indicates that

██████████ will be a "general sales agent." The petitioner also provided a copy of its April 1, 2003 consulting agreement with ██████████. Pursuant to the terms of the agreement, Mr. ██████████ was retained to advise and develop a marketing plan for the sale of green coffee beans to companies in Texas, Oklahoma, New York and the West Coast. The petitioner submitted copies of checks paid to Mr. ██████████ and ██████████ Consulting.

The director denied the petition on June 15, 2005, concluding that the petitioner had failed to establish that the beneficiary would be employed by the U.S. company in a primarily managerial or executive capacity. The director concluded that the petitioner does not appear to employ sufficient staff who would relieve the beneficiary from performing the day-to-day duties of the areas that he will oversee, such as administration, sales and distribution. The director further noted that the petitioner had not submitted evidence that the beneficiary would supervise professional, managerial or supervisory staff.

On appeal, counsel for the petitioner asserts that the director "erred in overlooking the staffing and organizational information provided for the US entity." Counsel asserts that the director relied only on the staffing levels as an indication of the ability of the U.S. company to support an executive position and disregarded the services of outside contractors and the relationship between the foreign and U.S. entity. Finally, counsel contends that the director misapplied the statutory definitions of managerial and executive capacity, noting that both definitions "recognize the concept of a function manager or executive, irrespective of staffing or organizational hierarchies."

Upon review of the petition and the evidence, the petitioner has not established that the beneficiary will be employed in a managerial or executive capacity. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

On review, 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. For example, the petitioner initially stated that the beneficiary's duties include "overall running of US company," "overall responsibility for entering into contracts and legal agreements with suppliers and distributors," and "overseeing import of coffee." In addition, the petitioner noted that the beneficiary is responsible for "all international trade decisions," and "purchase and sales contract negotiations." The petitioner did not, however, specify or provide examples of the types of decisions enacted by the beneficiary, clarify the beneficiary's actual duties and level of authority with respect to the purchasing and sales process, or describe what specific duties "overall running" of the company and "overseeing import" entail. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

While the beneficiary would evidently exercise discretion over the company's activities as its president and general manager, many of his responsibilities, particularly his participation in sales and purchasing activities, are not traditionally managerial in nature. Without detailed information regarding what specific tasks the beneficiary performs on a daily basis, the AAO cannot determine whether the beneficiary actually performs

management-level duties related to the company's sales, purchasing, import and other key functions. 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 (Rég. Comm. 1972)). The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

The director clearly advised the petitioner that the evidence submitted was insufficient to establish that the beneficiary would be employed in a primarily managerial or executive capacity, and in particular, raised concerns regarding the ability of the petitioner's single employee to relieve the beneficiary from performing the duties required in the day-to-day operation of the business.

In its response to the director's request for evidence, the petitioner provided an expanded description of the beneficiary's duties. However, while the position description is lengthier, it does not provide a clear depiction of the beneficiary's proposed duties, nor does it suggest that he would perform primarily managerial or executive duties as the petitioner's president and general manager. For example, the petitioner stated that the beneficiary will "implement and oversee all management operations" and "oversee distribution and support operations." The petitioner provided no concrete examples of what duties would be involved in implementing "management operations," nor did it describe the managerial duties involved in overseeing "distribution" or "support." Without further explanation, it cannot be concluded that overseeing distribution involves anything more than contacting a domestic freight provider to pick up a delivery. Similarly, without further explanation, the beneficiary's responsibility for product support may involve simply responding to customer inquiries regarding the petitioner's products. The beneficiary's responsibilities for planning and implementing company goals and policies and delegating "administrative tasks" to staff members are similarly ambiguous, as the petitioner has not described the beneficiary's goals and policies, nor claimed to employ any staff members who would actually perform the petitioner's day-to-day administrative functions. 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. Again, the actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

The remainder of the job description submitted in response to the director's request for evidence suggests that the beneficiary is directly involved in the petitioner's marketing, sales, and promotional functions, rather than primarily delegating these tasks to subordinate employees. For instance, the petitioner stated that the beneficiary will negotiate sales agreements with wholesalers and coffee roasters, meet with potential customers, market researchers and media personnel, attend trade conferences, and execute contracts. Based on a review of the beneficiary's position descriptions as a whole, and upon review of the totality of the record, it is reasonable to conclude that a significant portion of the beneficiary's time is devoted to marketing and selling the petitioner's products. 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).

Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. Although the director requested a specific description of the duties performed by the beneficiary on a daily basis, the petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). This failure of documentation is important, because some of the beneficiary's duties, including negotiating sales and purchase contracts, do not fall under traditional managerial duties as defined in the statute. The AAO will not accept broad, unsubstantiated assertions regarding the beneficiary's managerial or executive status in lieu of the required detailed job description.

Counsel correctly notes on appeal that the beneficiary is not required to supervise personnel in order to establish that the beneficiary is employed in a qualifying managerial or executive capacity. However, since the petitioner claims that the beneficiary's duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial in order to establish his employment in a managerial capacity. *See* § 101(a)(44)(A)(ii) of the Act. The petitioner has not claimed or submitted evidence to establish the petitioner's sole employee, who is described as either a warehouse worker or a sales representative, or its two contracted employees, are employed in managerial, supervisory, or professional positions. Although the petitioner's "management consultant" has been given the title of "vice president" on the employee list submitted in response to the request for evidence, his actual duties, and the scope and extent of his employment, have not been described. 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. Based on the above, the AAO concurs with the director's finding that the beneficiary will not be supervising a staff of managerial, supervisory or professional employees. An individual whose duties encompass duties of a first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act.

Counsel asserts on appeal that the director failed to recognize the concept of a "function manager or executive" and placed undue emphasis on the petitioner's staffing levels and organizational hierarchy. Counsel's assertion is not persuasive. 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, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a detailed description of the beneficiary's duties that identifies the function with specificity, articulates the essential nature of the function, and establishes the proportion of the beneficiary's daily duties attributed to managing the essential function. 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary *manages* the function rather than *performs* the duties related to the function. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988)).

Beyond the required description of the job duties, CIS 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. In the case of a function manager, where no subordinates are directly supervised, these other factors may include the beneficiary's position within the organizational hierarchy, the depth of the petitioner's organizational structure, the scope of the beneficiary's authority and its impact on the petitioner's operations, the indirect supervision of employees within the scope of the function managed, and the value of the budgets, products, or services that the beneficiary manages.

Although counsel correctly asserts that the regulations set forth requirements for a "function manager," counsel has not identified the specific function claimed to be managed or directed by the beneficiary, nor has counsel provided evidence that the beneficiary is primarily engaged in the management or direction of the management of an essential function for the petitioning company. 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). As discussed above, the record does not contain a detailed description of the beneficiary's actual duties, the proportion of time allocated to each duty, or evidence that the beneficiary performs primarily managerial or executive duties, therefore, it cannot be concluded that he will primarily manage an essential function.

Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for CIS 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). 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. Although counsel asserts that the director overlooked the staffing and organizational information submitted, a review of the director's decision shows that she gave proper consideration to the petitioner's claimed staffing levels, including both direct and contracted employees, and reasonably concluded that the petitioner did not have sufficient staff to relieve the beneficiary from performing many non-managerial duties associated with the day-to-day operations of the company.

At the time of filing, the petitioner was a two-year old import and wholesale distribution company claiming gross annual income of \$250,000. At the time of filing, the petitioner employed one warehouse employee, one commissioned sales representative, and one contracted management consultant. Although requested by the director, the petitioner did not provide job descriptions for the company's employees. 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). The nature and scope of the duties performed by the sales representative are unclear, as the

petitioner has submitted two different sales commission agreements, one of which assigns the sales representative to a particular customer, and one of which identifies the representative as a "general sales agent." It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Although requested by the director, the petitioner did not submit a 2004 IRS Form 1099 for either of its contracted employees, and it cannot be concluded that either employee provides services to the company on a full-time basis. Additionally, the petitioner has not explained how the services of the contracted employees obviate the need for the beneficiary to primarily conduct the petitioner's business, particularly in the areas of purchasing and sales. Given that the petitioner is primarily an import and sales company, it is not clear how a single commissioned representative would perform all of the company's day-to-day sales activities.

Moreover, the petitioner has a reasonable need for employees to perform duties associated with marketing, importing, domestic distribution, purchasing, inventory, bookkeeping, and routine administrative and clerical tasks inherent to the day-to-day running of its office. It has not been established that the beneficiary's staff would relieve him from performing the majority of these non-qualifying tasks as of the date of filing. Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) or the Act. As discussed above, the petitioner has not established this essential element of eligibility, as the beneficiary's job description includes a number of non-qualifying duties. Based on the record of proceeding, the director reasonably concluded that the beneficiary would have to participate extensively in the day-to-day operations of the company, and that such non-managerial tasks would prevent him from performing primarily managerial or executive duties. The petitioner has not submitted evidence on appeal to overcome the director's determination on this issue.

The petitioner indicates that the U.S. company anticipates hiring additional managerial and administrative staff as the company expands. However, the petitioner's prospective staffing levels will not be considered in this proceeding. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Based on the foregoing discussion, the petitioner has failed to establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the remaining issue to be discussed in the present matter is whether the petitioner has established that a qualifying relationship exists with the beneficiary's overseas employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The petitioner states that it is a subsidiary of [REDACTED] Brazil. The petitioner's articles of incorporation indicate that the company is authorized to issue 1,000,000 shares of stock with a par value of \$1.00 per share. As evidence of the foreign entity's ownership of the U.S. company, the petitioner submitted: (1) a notarized letter from [REDACTED] who is identified as the petitioner's vice president, dated April 23, 2003, stating that 510 shares of the 1,000 shares issued to date are owned by the foreign entity; and (2) the petitioner's stock certificate number eight, issuing 510 shares of the petitioner's stock to the foreign entity on April 1, 2003.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

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

Based on the limited evidence submitted, the AAO cannot conclude that the U.S. company is a qualifying subsidiary of the foreign entity. The petitioner has not provided copies of its stock certificates numbers one through seven, nor a copy of the company's stock transfer ledger, which would show the total number of shareholders, the number of shares issued, and the resulting distribution of ownership and control. 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)).

Furthermore, although the petitioner has not submitted copies of any of its IRS Forms 1120, U.S. Corporation Income Tax Returns, the record does contain a Form 7004, Application for Automatic Extension of Time to File Corporation Income Tax Return for the 2004 tax year. The petitioner indicated on Form 7004 that it will file Form 1120S, U.S. Income Tax Return for an S Corporation (Form 1120S). To qualify as a subchapter S corporation, a corporation's shareholders must be individuals, estates, certain trusts, or certain tax-exempt organizations, and the corporation may not have any foreign corporate shareholders. *See Internal Revenue Code*, § 1361(b)(1999). A corporation is not eligible to elect S corporation status if a *foreign corporation* owns it in any part. Accordingly, since the petitioner would not be eligible to elect S-corporation status with

a foreign parent corporation, it appears that the U.S. entity is owned by one or more individuals residing within the United States rather than by a foreign entity. This conflicting information has not been resolved.

Based on the foregoing discussion, the petitioner has not established that there is a qualifying relationship between the U.S. and foreign entities. For this additional reason, the petition cannot be approved.

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).

Finally, the AAO acknowledges the beneficiary's assertion in a statement submitted on appeal that USCIS had previously approved an L-1A petition filed on his behalf by the instant petitioner. It must be emphasized that that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). If the previous nonimmigrant petition was approved based on the same unsupported 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).

Furthermore, 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 and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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. § 1362. 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.