U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 2 6 2006
WAC 96 255 50265

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, approved the employment-based visa petition on October 1, 1996. Following an interview and investigation performed in connection with the beneficiary's Form I-485 Application to Adjust Status, the director issued a notice of intent to revoke and properly provided the petitioner thirty days within which to rebut the proposed revocation. In a decision dated September 23, 2005, the director revoked approval of the immigrant petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the instant immigrant petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation organized under the laws of the State of California that is doing business as a wholesaler of ball bearings. The petitioner seeks to employ the beneficiary as its president.[1]

On August 1, 2005, the director issued a notice of intent to revoke as a result of information obtained in connection with the beneficiary's I-485 application.[2] In a decision dated September 23, 2005[3], the director revoked approval of the petition, concluding that the beneficiary did not qualify for the requested classification as a result of the petitioner's failure to demonstrate that: (1) the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity; or (2) at the time of filing, a qualifying relationship existed between the foreign and United States entities.

On appeal, counsel for the petitioner contends that the beneficiary has been employed by the petitioning entity in a "managerial/executive capacity," during which he has supervised five professionals. Counsel states that with regard to the issue of qualifying relationship, Citizenship and Immigration Services (CIS) failed to consider the evidence submitted, which counsel claims "clearly show[s] that the U.S. entity is 100% owned by the foreign entity." Counsel submits a brief and additional evidence in support of the appeal.

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

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
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> * * *

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[1] The AAO notes that on August 28, 1995, the petitioner filed an I-140 immigrant petition requesting employment of the beneficiary herein. The immigrant petition was denied by Citizenship and Immigration Services (CIS) on October 12, 1995. Despite certification under the penalty of perjury, the information provided by the petitioner in Part Four of the present I-140 petition indicated that an immigrant petition had not previously been filed for the benefit of the beneficiary.

[2] The record indicates that the Notice of Intent to Revoke was mailed to a former address of the petitioner's counsel, as well as an address for the petitioning entity which appears to have been changed. The director's subsequent Notice of Revocation indicates that Citizenship and Immigration Services did not receive a response to the Notice of Intent to Revoke. As it is likely that the petitioner did not receive the director's Notice, the AAO will consider herein the new evidence submitted on appeal from the petitioner's new counsel.

[3] The AAO notes that the decision, while dated September 23, 2005, was not mailed to the petitioner until October 17, 2005.

> (C) Certain Multinational Executives and Managers. – An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

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

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

Following approval of an immigrant or nonimmigrant petition, the director may revoke approval of the petition in accordance with the statute and regulations. Section 205 of the Act, 8 U.S.C. § 1155 (2005), states: "The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 1154 of this title. Such revocation shall be effective as of the date of approval of any such petition."

Regarding "good and sufficient cause" and the revocation of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals (BIA) has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*, 19 I&N Dec. at 590. Notwithstanding the CIS burden to show "good and sufficient cause" in proceedings to revoke approval of a visa petition, the petitioner bears the ultimate burden of establishing eligibility for the benefit sought. The petitioner's burden is not discharged until the immigrant visa is issued. *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman,* 736 F.2d 1305 (9th Cir. 1984).

The AAO will first address the issue of whether the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

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

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

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

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

The petitioner filed the instant immigrant petition on September 26, 1996. In an attached letter, dated September 17, 1996, the petitioner provided the following outline of the job duties associated with the beneficiary's position as president of the United States entity:

1. Directing and supervising the daily operation of the company.

2. Direct, supervise/oversee and participate in purchasing the bearing products in USA and in exporting these products to China. In addition, he is also responsible for purchasing bearing related products in China and import[ing] these products from China to USA.
3. Represent the both parent company and this company in business negotiation, business transaction and business expansion.
4. Staff recruitment, training, and evaluation of their performance.
   In this position, [the beneficiary] is responsible fora [sic] wide range of managerial functions as described above. The ability of reading, writing and speaking the Chinese (Mandarin) ability is also required because the President must be able to communicate with the Chinese buyer/purchasing agent in China.

The petitioner submitted its state quarterly tax report for the quarter ending September 30, 1996, the period during which the employment-based petition was filed, which identified the beneficiary as the sole worker employed at the time of filing.

In a decision dated September 23, 2005, the director concluded that the petitioner had not established that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The director noted an inconsistency in the staffing levels represented by the petitioner at the time of filing, and the fact that the beneficiary was the only employee identified on the petitioner's wage report for the quarter ending September 30, 1996, the period during which the instant immigrant petition was filed. The director also stated that the job description offered by the petitioner was not "detailed enough" to classify the beneficiary as a manager or executive. Referencing portions of the beneficiary's job description, the director indicated that it was "too general and vague to convey any understanding of exactly what the beneficiary will be doing on a daily basis." The director further noted that the petitioner had not demonstrated that the beneficiary would be managing or supervising professional employees. Consequently, the director revoked approval of the petition.

On appeal, counsel claims that the beneficiary has been employed by the United States entity in a qualifying capacity. Counsel provides the following additional outline of the beneficiary's job duties:

1. Develop a strategic plan based on the parent company's directives, to advance the subsidiary's mission and objectives
2. Implement and optimize business strategies in accordance with market changes and technology development
3. Oversee business operations, approving company operational procedures, policies, and standards, as well as directing and controlling the work of subordinate managerial and professional employees, who are responsible for optimizing daily operation functions
4. Direct the organization's financial goals, objectives, and budgets. Review financial reports, oversee the investment of funds and managing associated risks, allocating resources to various functions, executing capital-raising strategies to support the business expansion
5. Review progress reports to determine status in attaining objectives, reprioritizing key business projects, revising objectives and plans in accordance with current conditions

Counsel acknowledges the beneficiary as the sole employee of the petitioner at the time of filing, yet addresses the quarterly tax reports submitted by the petitioner both before and after the filing of the petition,

which identify the employment of at least four workers. Counsel further notes that "with the development of the company's business," the petitioner has employed approximately six or seven workers. Counsel states that "[the] compelling evidence shows that most of the times, there are always more than four supporting staff to aid the beneficiary with his work," and to relieve the beneficiary "from the day-to-day tasks of running the business." Counsel references the petitioner's current organizational chart, which depicts the beneficiary as supervising four individuals in the positions of vice-president of finance, vice-president of marketing, and sales representative.

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

The AAO notes that counsel's reference on appeal to the petitioner's staffing levels both before and after the filing of the immigrant petition will not be considered herein. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The petitioner does not clarify whether the petitioner is claiming to employ the beneficiary in a primarily managerial capacity under section 101(a)(44)(A) of the Act, or a primarily executive capacity under section 101(a)(44)(B) of the Act. On Form I-290B, counsel notes the beneficiary's employment in a "managerial/executive capacity." Counsel also addresses in his appellate brief the petitioner's compliance with the statutory requirements in demonstrating the beneficiary's "managerial or executive responsibilities." The petitioner also stated in its September 17, 1996 letter that the beneficiary would perform "managerial functions" in his "executive Managerial position." A petitioner may not claim to employ a beneficiary as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner chooses to represent the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager. The petitioner has not delineated the beneficiary's employment as either a manager or an executive, or the beneficiary's qualification as both.

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 overly vague and nonspecific job description offered by the petitioner fails to identify the managerial or executive job duties to be performed in the beneficiary's role as president. The petitioner's claims that the beneficiary would supervise the company's daily operations, purchasing and exports, represent the petitioner in negotiations and business transactions, "[d]evelop a strategic plan" for the company, "[i]mplement . . . business strategies," oversee and approve "operational procedures, policies, and standards," direct and review financial goals and reports, and review progress reports is insufficient to establish the supposition that the beneficiary would perform primarily managerial or executive tasks of the business. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The AAO also notes the petitioner's recitation of the statutory definitions of "managerial capacity" and "executive capacity," rather than specifically describing the beneficiary's qualifying job duties. *See* sections 101(a)(44)(A) and (B) of the Act. For instance, the petitioner described the beneficiary as "[d]irecting . . . the

daily operation of the company," "directing and controlling the work of subordinate managerial and professional employees," and "direct[ing] the organization's financial goals, objectives, and budgets." However, conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Additionally, of particular importance, is the petitioner's failure to account for the employment of any subordinate workers at the time of filing that would relieve the beneficiary from performing day-to-day non-qualifying functions of the petitioner's business. The record demonstrates, and counsel concedes on appeal, that the beneficiary was the petitioner's sole employee at the time of filing. Pursuant to section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. 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). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

Here, as the sole employee of the company, it is not plausible that the beneficiary would be performing primarily managerial or executive tasks of the company, or that the petitioner's reasonable needs would be met through the employment of the beneficiary only. Counsel essentially recognizes the need for additional personnel to perform the petitioner's day-to-day tasks in his acknowledgement that three workers employed immediately prior to the instant filing "quit their jobs in a short notice, leaving the beneficiary very little time to fill out the position with new employees." It is evident from the record that additional employees are essential to the petitioner's operations, and that absent these workers, the beneficiary would be responsible for all non-managerial and non-executive operational and administrative functions of the company. 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 above discussion, the petitioner has not established that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. Accordingly, approval of the immigrant petition was properly revoked, and the subsequent appeal will be dismissed.

The AAO will next consider the issue of whether the petitioner demonstrated the existence of a qualifying relationship between the foreign and United States entities.

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

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

> (B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity;
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> * * *
>
> *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

In its September 17, 1996 letter submitted with the immigrant petition, the petitioner stated that the United States company was the subsidiary of "Siping Foreign Trade Corporation," a company located in the People's Republic of China with which the beneficiary was employed prior to his transfer to the United States. The petitioner submitted a copy of its stock certificate, issued on June 30, 1994, which named the beneficiary's foreign employer as the owner of 70,000 shares of stock.

In his September 23, 2005 decision, the director concluded that the petitioner had not demonstrated the existence of a qualifying relationship between the foreign and United States entities. The director stated that the petitioner neglected to submit "proof of payment," such as wire transfer receipts or bank statements, evidencing consideration furnished by the foreign entity in exchange for its purported stock ownership in the United States entity. The director also referenced an overseas investigation performed by the United States Department of Justice in Beijing, noting that during an interview with the foreign entity, the company's vice general manager could not identify the United States entity. The director also noted that Schedule J of the petitioner's corporate tax returns for the years 1993 through 1996 failed to identify the petitioner as a "parent-subsidiary controlled company." Consequently, the director revoked approval of the immigrant petition.

On Form I-290B, counsel contends that the petitioner submitted evidence documenting that the United States entity is wholly owned by the foreign corporation. In his brief on appeal, counsel references the statutory definition of "affiliate," as well as the definition of a "parent" company provided in *Matter of Hughes*, 18 I&N Dec. 289 (BIA 1982). Counsel states:

> Based on these definitions, the proper inquiry into whether a qualifying business relationship exists is to first identify if a parent entity exists which has a substantial ownership interest in the subsidiary and exercises control over the management of the subsidiary. [CIS] does not call into question the actual amount of control exercised by the foreign business entity and bases the denial on the lack of proof of payment and an interview conducted between an Investigating Officer and Managers who were not familiar with the operation of the overseas company.[4]

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[4] Counsel references the investigation performed by the United States Department of Justice in Beijing, during which the investigator had a telephone conversation on April 11, 2000 with the vice-general manager of the beneficiary's foreign employer, who revealed that the beneficiary was a "business partner," and referenced the name of the petitioning entity as

In support of the qualifying relationship, counsel submits a copy of the petitioner's Notice of Transaction Pursuant to Corporations Code Section 25102(f), as well as two stock certificates, dated June 1, 1995, naming and as the owners of 34,300 and 35,700 shares of the petitioner's stock, respectively. Counsel also provided a copy of the petitioner's stock transfer ledger documenting the transfer of stock to each of the above-named parties.

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

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

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

The AAO first notes an inconsistency in the claimed qualifying relationship. While both the petitioner and counsel claim that the foreign entity owns 100 percent of the petitioner's issued stock, counsel provides on appeal two stock certificates that conflict with the qualifying relationship represented by the petitioner. Based on the submitted stock certificates, an unrelated company, " " owns a majority share of the petitioning entity. In contrast, however, both the petitioner's 1995 and 1996 corporate tax returns identify " as the owner of 100 percent of the petitioner's stock. 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).

Of particular importance in the instant matter, however, is the requirement that a qualifying relationship be based on common ownership of the prospective United States employer and the company *by which the alien was employed overseas*. Here, the beneficiary was employed by " " The record does not demonstrate that the beneficiary's foreign employer and the United States entity are affiliates, or that a parent-subsidiary relationship exists between the two organizations. *See* 8 C.F.R. § 204.5(j)(3)(i)(C). Based on the stock certificates submitted on appeal, the majority of the petitioner's stock is owned by " " The petitioner has not indicated that the beneficiary has

been employed by for at least one year within the three years preceding his entry into the United States as a nonimmigrant. Moreover, there is no evidence that Corporation owns and controls the beneficiary's foreign employer, thereby creating an affiliate relationship between the petitioner and

As the petitioner has not substantiated its claim that the beneficiary's foreign employer owns a majority interest in the petitioning entity, the AAO need not address the question raised by the director in his Notice of Intent to Revoke as to whether the Siping City Foreign Trade Corporation furnished consideration in exchange for its purported stock interest.

Based on the foregoing discussion, the petitioner has not established a qualifying relationship between the United States entity and the beneficiary's foreign employer as required in the regulations and section 203(b)(1)(C) of the Act. Accordingly, approval of the petition was properly revoked, and the subsequent appeal will be dismissed.

An additional issue not addressed by the director is whether the beneficiary was employed by the foreign entity, in a primarily managerial or executive capacity. The petitioner stated in its September 17, 1996 letter that prior to the beneficiary's transfer to the United States as a nonimmigrant, the beneficiary was employed as the "vice General Manager" of the foreign organization. Appended documentation identified the beneficiary as the company's "Vice-president." In an attached "Certificate of Work Employment," the manager of the foreign entity stated that as the company's vice-president, the beneficiary managed eight departments. The petitioner failed to clarify the position in which the beneficiary was employed overseas. Additionally, the extremely limited job description provided by the petitioner fails to specifically identify the managerial or executive job duties performed by the beneficiary. 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)). Case law dictates that a petitioner's blanket claim of employing the beneficiary as a manager or executive without a description of how, when, where and with whom the beneficiary's job duties occurred is insufficient for establishing employment in a primarily managerial or executive capacity. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. Absent a more detailed description of the beneficiary's role in the foreign entity, the AAO cannot conclude that the beneficiary was employed overseas in a primarily managerial or executive capacity. The petition will be denied 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 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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[5] The AAO notes that documentation submitted in connection with a prior I-140 immigrant petition filed for the benefit of the instant beneficiary indicates that in June 1995 " and "determined to work together to develop [their] overseas markets," thereby resulting in ownership of 51 percent of the petitioner's stock.

The AAO recognizes the beneficiary's previously approved L-1A nonimmigrant petition. It must be noted that many I-140 immigrant petitions are denied after CIS 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 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). 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 CIS 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). Furthermore, 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 approval of a nonimmigrant petition in no way guarantees that CIS will approve an immigrant petition filed on behalf of the same beneficiary.

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 petition on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's decision to revoke approval of the petition will be affirmed and the appeal will be dismissed.

ORDER: The appeal is dismissed.