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U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: NOV 09 2009  
WAC 00 198 52210

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

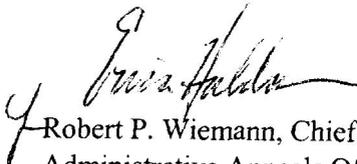
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to  
Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



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, initially approved the employment-based visa petition. Following an investigation performed in connection with the beneficiary's Form I-485 application to adjust status, the director issued a notice of intent to revoke, properly providing the petitioner thirty days within which to rebut the proposed revocation. Despite the petitioner's response, the director revoked approval of the 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 visa 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 managing hotels and motels, and claims to be the subsidiary of the beneficiary's foreign employer. The petitioner seeks to employ the beneficiary as its president.

The director approved the petition on October 11, 2000. Immigration and Naturalization Services (now Citizenship and Immigration Services (CIS)), in conjunction with the American Institute in Taiwan, subsequently performed an overseas investigation in connection with the beneficiary's application to adjust status to a permanent resident. Following the investigation, the director issued a notice of intent to revoke approval of the petition, to which the petitioner responded within the appropriate thirty-day period.

The director revoked approval of the petition on February 14, 2006, stating that the petitioner had not demonstrated that: (1) a qualifying relationship existed at the time of filing between the foreign and United States entities; or (2) the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

On appeal, counsel for the petitioner contends that a parent-subsidiary relationship existed between the foreign and United States entities at the time of filing, stating that the petitioning entity is wholly owned by the foreign corporation. Counsel also challenges the director's finding that the beneficiary would not be employed in the United States as a manager or executive. Counsel submits a brief in support of the appeal.

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

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

\* \* \*

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

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

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

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 Esteime*, . . . 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 un rebutted, 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 Esteime*, 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 (9<sup>th</sup> Cir. 1984).

The AAO will first address the issue of whether the petitioner established 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:

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

(B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity;

\* \* \*

*Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

The petitioner filed the instant petition on June 20, 2000. In an appended letter, dated May 9, 2000, the petitioner stated that the United States company is a wholly owned subsidiary of the foreign corporation, Golden Garden Construction (GGC). The petitioner referenced three wire transfers of funds from the foreign entity to the petitioner in the months of February and March 1999, which the petitioner claimed accounted for GGC's 100 percent ownership of the United States company. The AAO notes that according to information contained in the petitioner's January 12, 2006 letter and the foreign entity's organizational chart, prior to his transfer to the United States as a nonimmigrant, the beneficiary was employed by "Golden Door Planning Co., Ltd.," a separate Taiwanese company, through which the petitioner represents GGC was doing business.

The petitioner submitted the following documentary evidence of the purported parent-subsidiary relationship between the petitioning entity and GGC: (1) its articles of incorporation authorizing the petitioner to issue 1,000,000 shares of common stock; (2) a March 30, 1999 stock certificate naming GGC as the owner of 105,000 shares of the petitioner's common stock; (3) a stock transfer ledger recording the transfer of 105,000 shares of stock to GGC on March 30, 1999; (4) the minutes from a January 25, 1999 organizational meeting noting the petitioner's intention to sell 105,000 shares of stock to GGC; (5) copies of three wire transfer notices reflecting the petitioner's receipt of a cumulative amount of \$105,000 in the months of February and March 1999; (6) copies of the petitioner's bank statements from February and March 1999 confirming the petitioner's receipt of the transferred monies. The AAO notes that the petitioner's 1999 and 2000 federal income tax returns identify GGC as the owner of 100 percent of the petitioner's stock.

In his December 20, 2005 notice of intent to revoke, the director focused on the petitioner's management of a franchise hotel in the United States, stating that while the petitioner "may purchase a franchise [it] can never own and control it because it only holds a license from the franchiser to operate the establishment." The director stated that the petitioner did not essentially own the franchised hotel, but "only purchased the license to operate it." The director determined that a qualifying relationship did not exist between the foreign and United States entities as a result of the franchise arrangement.

Counsel for the petitioner responded in a letter dated January 12, 2006, contending that the director misunderstood the claimed parent-subsidiary relationship between the foreign and United States entities. Counsel stated that the franchised hotel in the United States "is irrelevant to the qualified relationship," and noted that the petitioner has simply chosen hotel management as the business in which to engage in the United States. Counsel stated that the petitioning entity "has been a 100% fully owned and controlled" subsidiary of GGC. Counsel further stated "[w]hether or not GGC controls or owns such franchise is completely irrelevant with respect to a qualified relationship between [the] foreign company and its

subsidiary." Counsel again submits portions of the above-outlined documentary evidence in support of the parent-subsidiary relationship between the petitioner and GGC.

In his February 14, 2006 decision, the director revoked approval of the petition based on the petitioner's failure to demonstrate the existence of a qualifying relationship between the foreign and United States entities. The director again noted that the petitioner operated a franchise in the United States, which restricted the petitioner to merely operating the hotel rather than providing the petitioner with an ownership interest. The director concluded that because of this franchise arrangement, the petitioner had failed to demonstrate that the United States and foreign entities possessed a qualifying relationship.

Counsel for the petitioner filed an appeal on March 3, 2006, claiming that the director failed to understand the qualifying relationship between GGC and the petitioner. In his March 20, 2006 appellate brief, counsel states while the petitioner is in the business of "chartering hotels or motels for management and operations," the issue of qualifying relationship should consider the relationship between the petitioner and GGC, not GGC and the franchised hotel. Counsel states "whether or not GGC owns or controls such franchise or other assets is completely irrelevant with respect to a qualified relationship between [the] foreign company and its subsidiary under 8 C.F.R. § 204.5(j)(2)." Counsel explains that the petitioner's franchise of hotels in the United States "is simply a business or source of income . . . that has no legal bearing on the existing qualified relationship regardless of whether or not [the] U.S. subsidiary owns or controls such franchise." As evidence of the parent-subsidiary relationship, counsel again submits copies of the stock certificate, stock transfer ledger, the minutes from the petitioner's organizational meeting, and the petitioner's lease agreements.

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

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

An association between a foreign and U.S. entity based on a franchise agreement is usually insufficient to establish a qualifying relationship. *See* O.I. 214.2(1)(4)(iii)(D) (noting that associations between companies based on factors such as ownership of a small amount of stock in another company, or licensing or franchising agreements, do not create affiliate relationships between the entities for L-1 purposes); 9 FAM 41.54 N7.1-5. As noted by the director, a franchise, like a license, typically requires that the franchising organization comply with the franchisor's restrictions, without actual ownership and control of the franchise organization. *See Matter of Schick*, 13 I&N Dec. 647 (Reg. Comm. 1970) (finding that no qualifying relationship exists where the association between two companies was based on a license and royalty agreement that was subject to termination since the relationship was "purely contractual").

In the present matter, however, the petitioner does not represent the existence of a franchise agreement as the basis of the purported relationship between the foreign entity and United States corporation. Rather, the petitioner exists as a separate United States entity. The franchise agreement emphasized by the director is between the petitioning entity and the United States hotels managed by the petitioner. As a result, the director's comments as they relate to the issue of a franchise are withdrawn.

The proper analysis herein is the relationship between the petitioner and the beneficiary's foreign employer, Golden Door Planning Company, Ltd. *See* § 203(b)(1)(C) of the Act (stating that a multinational manager or executive is one 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"). In order to establish eligibility for classification as a multinational manager or executive for immigrant visa purposes, the petitioner must establish that it maintains a qualifying relationship with the beneficiary's foreign employer; the foreign corporation or other legal entity that employed the beneficiary must continue to exist and have a qualifying relationship with the petitioner at the time the immigrant petition is filed. 8 C.F.R. § 204.5(j)(3)(i)(C).

Although the regulations at 8 C.F.R. § 204.5(j)(3)(i)(B) reference beneficiaries who are already employed by the petitioner as nonimmigrants, the fact that the beneficiary is currently in the United States in L-1A classification does not exempt the petitioner from its burden to establish the existence of an ongoing qualifying relationship with the beneficiary's previous foreign employer as of the date the petition is filed. Rather, the regulation at 8 C.F.R. § 204.5(j)(3)(i)(B) simply allows CIS to look beyond the three-year period immediately preceding the filing of the I-140 petition in order to determine whether the beneficiary has the requisite one year of qualifying employment abroad. To construe the regulation as creating an exception that allows L-1A beneficiaries to qualify as multinational managers without a qualifying relationship between the United States and foreign entities would contravene the plain language of the statute. The petitioner must establish eligibility at the time of filing the immigrant visa petition. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Here, the beneficiary was employed by Golden Door Planning Company, Ltd. prior to his entrance into the United States as a nonimmigrant. Counsel explains on appeal that the foreign company, GGC, which the record demonstrates is the sole owner of the United States company, "has been doing business through four other [foreign] companies," one of which is Golden Door Planning Company, Ltd. In its earlier letter, dated May 9, 2000, the petitioner represented Golden Door Planning Company, Ltd. as one of three companies "taking care of different angles of its businesses." An organizational chart of the foreign company suggests that Golden Door Planning Company, Ltd. is an affiliate of GGC.

The petitioner's vague representations of Golden Door Planning Company, Ltd. do not establish the relationship of the overseas company with GGC or the petitioning entity. The record is devoid of evidence of the ownership and control of Golden Door Planning Company, Ltd., or of its relationship with GGC or the petitioning entity. Absent a detailed discussion and documentary evidence of Golden Door Planning Company, Ltd.'s ownership, the AAO cannot properly analyze whether a qualifying relationship existed between the beneficiary's foreign employer and the United States company. 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)). As a result, the petitioning entity and the beneficiary's foreign employer cannot be deemed to have possessed a qualifying relationship at the time of filing. Accordingly, the appeal will be dismissed.

The AAO will next consider 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.

On the Form I-140, the petitioner noted the beneficiary's proposed employment as president, during which he would manage the company's fourteen-person staff. In its attached May 9, 2000 letter, the petitioner outlined the following job duties to be performed during the beneficiary's employment in an "executive" capacity:

- In charge of the overall day-to-day management of all facets of the hotel.
- Plan, develop and establish policies of the hotel in accordance with the [b]oard of [d]irectors.
- Under the supervision of the [b]oard of [d]irectors of [the] [p]arent [c]ompany, exercise wide latitude in discretionary decision making.
- Direct the development and implementation of the total sales efforts of the hotel, including securing new accounts, maintaining existing accounts, supervising activities of

sales personnel, and executing sales and marketing strategies to maximize the profitability of the hotel while maintaining outstanding guest service.

- Administer the utilization and implementation of the financial analysis and annual operating budgets for each department to determine appropriate strategy and progress of the hotel's business and designate further business goals and plans.
- Meet with local business leaders to establish, maintain, and expand the network for the hotel.
- Oversee the management strategies, promotion activities, and approve the management improvement.
- Has the authority to recruit, train, terminate, evaluate and promote the managerial personnel based on their job performance, qualification and contribution.
- Responsible for staffing the hotel and setting directions for each employee, and also oversees the management of salary and bonus structures.

The beneficiary, in his capacity as president, submitted a second letter, dated May 8, 2000, describing essentially the same job duties for his position as those outlined above.

In an attached organizational chart, the beneficiary was identified as managing the company's business manager, accounting manager, maid supervisor, two front desk clerks, a night auditor, a head maid, a maintenance person, and five housekeepers. The petitioner's quarterly tax return for the period ending June 30, 2000 reflected the employment of all but one of the persons in the above-named positions. The quarterly tax return failed to identify the employment of one of the petitioner's housekeepers. The petitioner also provided brief job descriptions of each of the subordinate positions.

In his notice of intent to revoke, the director noted that the petitioner is operating a motel that is staffed with non-professional employees. The director defined the term "professional," stating that even if the petitioner hired individuals holding a baccalaureate degree, "the employees would be considered non-professional as the profession is considered a service industry and non-professional in nature." The director stated that the beneficiary's title of president, by itself, is not sufficient to establish that the beneficiary would be employed in a primarily managerial or executive capacity.

In his January 12, 2006 response, counsel for the petitioner outlined the same job duties as those named above, noting them as examples of the job duties performed by the beneficiary in both a managerial and executive capacity. As additional evidence of the beneficiary's purported employment in a managerial and executive capacity, counsel submitted the following: (1) copies of the petitioner's organizational charts from 1999 through 2005; (2) letters from three of the petitioner's previously and presently employed business managers, each of whom described the beneficiary as the general manager who was responsible for supervising and scheduling personnel, overseeing management duties, and performing the "daily hotel management operation[s]"; (3) copies of the letters submitted by the petitioner in connection with the L-1A nonimmigrant visa petition previously filed on behalf of the beneficiary; (4) the petitioner's hotel lease agreements; (5) checks signed by the beneficiary as payment for salaries, utilities, hotel purchases, and marketing costs; and (6) copies of the petitioner's federal tax returns signed by the beneficiary. Counsel stated that the cancelled checks demonstrate that the beneficiary "was fully involved [in running the hotel] and supervised in every aspect."

In his February 14, 2006 decision, the director concluded that the petitioner had failed to demonstrate that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The director outlined the statutory definitions of "managerial capacity" and "executive capacity," and essentially restated his previous findings as to why the beneficiary would not qualify as a manager or executive. The director determined that the petitioner had not demonstrated that the beneficiary would supervise of the work of professional employees. The director acknowledged the cancelled checks submitted by counsel, but concluded that the record was not sufficient to establish that the beneficiary would be employed in a primarily managerial or executive capacity. Accordingly, the director revoked approval of the petition.

On appeal, counsel states that the statutory definition of "managerial capacity" does not limit managers to those who are supervising professionals. Counsel notes that the beneficiary may also qualify as a manager if he is supervising managerial or supervisory employees. Counsel points out that the beneficiary's immediate subordinate is a business manager, who counsel references as a "senior supervisor or manager." Counsel states that whether the business manager is also a professional "has no bearing" in determining the beneficiary's employment capacity.

Counsel further contends in his appellate brief that CIS failed to "closely" review the evidence offered by the petitioner in opposition to the proposed revocation. Counsel restates the managerial and executive job duties of the beneficiary as president and general manager, and again outlines the documentation previously submitted as evidence of the beneficiary's eligibility as a multinational manager or executive. Counsel challenges the director's finding of insufficient evidence, stating that the director did not explain why the cancelled checks and letters from the beneficiary's business managers did not establish the beneficiary's employment in a primarily managerial or executive capacity.

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.

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).

Here, a significant portion of the beneficiary's job description is a restatement of the statutory definitions of "managerial capacity" and "executive capacity." *See* §§ 101(a)(44)(A) and (B) of the Act. For example, the beneficiary is described as planning, developing and establishing the hotel's policies and exercising "wide latitude of discretionary decision making," responsibilities comparable to those identified as "executive." *See* § 101(a)(44)(B) of the Act. Additionally, the petitioner stated that the beneficiary would be responsible for the "overall management of the company," as well as supervise the hotel's "day-to-day management," and possess the authority to recruit, train, hire and fire employees. Again, these responsibilities are essentially restatements of the requirements of "managerial capacity." *See* § 101(a)(44)(A) of the Act. Without a comprehensive discussion of the specific job duties associated with the broad job responsibilities held by the beneficiary, the record does not demonstrate his proposed employment in a primarily managerial or executive capacity. 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).

Similarly, the remaining job description is not sufficiently detailed as to identify the specific managerial or executive job duties to be performed by the beneficiary as president and general manager. The petitioner provided brief statements that the beneficiary would "oversee the management strategies [and] promotion activities," "approve the [company's] management improvement," expand the hotel's business network, and determine and designate business goals and plans. Again, the petitioner's vague statements regarding the "strategies," "activities," and "goals" managed by the beneficiary do not identify his specific managerial or executive job duties. Additionally, it is unclear what is meant by "approv[ing] the management improvement," or why this responsibility would be deemed managerial or executive in nature. 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. *Id.* at 1108.

The petitioner's additional reference to the beneficiary's responsibility of directing sales efforts and sales personnel, and executing sales and marketing strategies does not comport with the evidence in the record. Specifically, the petitioner did not identify in its letters, organizational chart, or list of personnel any workers employed as sales personnel. The AAO recognizes that the petitioner's business manager is represented as planning and directing the company's sales and promotions, a responsibility, which, incidentally, appears to overlap with that of the beneficiary. Yet, there are no direct sales associates identified as performing the sales functions of the company. Also, the petitioner only mentions the beneficiary's responsibility of developing and implementing sales efforts, without explaining in any detail the petitioner's sales and marketing strategies or functions. The limited record raises the question of whether the beneficiary is actually overseeing sales personnel, as well as the extent of the petitioner's marketing and sales efforts. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Counsel claims on appeal that when analyzing the beneficiary's employment capacity CIS disregarded the letters written by the petitioner's business managers. It is unclear whether the director specifically considered the three letters submitted from the company's business managers. When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i).

The AAO notes, however, that the content of the letters does not necessarily enhance the petitioner's claim that the beneficiary would be primarily employed as a manager or executive. The business managers noted the beneficiary's authority to hire, fire and promote employees, and to oversee "the daily operation of the hotel" and "all the management duties," yet failed to expand on the job descriptions previously offered by the petitioner or clarify his specific managerial or executive job duties.

Moreover, the business managers addressed the beneficiary's role in "the daily hotel management operation," which included performing such non-managerial and non-executive tasks as writing checks and paying bills. Counsel also submitted checks signed by the beneficiary as evidence of his managerial and executive authority. The checks represent payments made by the petitioner for utilities, supplies, workman's compensation insurance, credit cards, and taxes. It is not clear why the beneficiary, rather than the petitioner's accounting manager or auditor, would be responsible for performing the day-to-day administrative task of making routine payments.

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 § 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). 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.*

At the time of filing, the petitioner employed the beneficiary as president, as well as a support staff of twelve workers. Based on the wages reflected on the quarterly tax returns for the period ending June 30, 2000, the beneficiary, as well as the petitioner's business manager, front desk clerk, maid supervisor, and head maid were likely the petitioner's only full-time workers at the time of filing. The limited wages paid to the remaining seven employees suggest that they were employed on a part-time basis. It is questionable how the petitioner's reasonable needs would be met through the employment of five full-time workers and seven part-time employees, which notably included the petitioner's accounting manager and night auditor, the only two people represented as being responsible for performing the petitioner's daily business operations. The record, as presently constituted, does not demonstrate that the reasonable needs of the petitioning company might plausibly be met by the services of the beneficiary as president and its subordinate staff.

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) of the Act. As discussed above, the petitioner has not established this essential element of eligibility.

The AAO further notes inconsistencies in the staffing levels, as the front desk clerk is represented as receiving compensation greater than that paid to his supervisor, the business manager. Also, the head maid, who is subordinate to the petitioner's maid supervisor, is compensated at a higher wage than her supervisor. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Counsel notes that CIS previously approved two L-1A nonimmigrant visa petitions filed by the petitioner on behalf of the beneficiary. It should be noted that, in general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by CIS than nonimmigrant petitions. The AAO acknowledges that both the immigrant and nonimmigrant visa classifications rely on the same definitions of managerial and executive capacity. See §§ 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Although the statutory definitions for managerial and executive capacity are the same, the question of overall eligibility requires a comprehensive review of all of the provisions, not just the definitions of managerial and executive capacity. There are significant differences between the nonimmigrant visa classification, which allows an alien to enter the United States temporarily for no more than seven years, and an immigrant visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. Cf. §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; see also § 316 of the Act, 8 U.S.C. § 1427.

In addition, unless a petition seeks extension of a "new office" petition, the regulations allow for the approval of an L-1 extension without any supporting evidence and CIS normally accords the petitions a less substantial review. *See* 8 C.F.R. § 214.2(l)(14)(i) (requiring no supporting documentation to file a petition to extend an L-1A petition's validity). Because CIS spends less time reviewing L-1 petitions than Form I-140 immigrant petitions, some nonimmigrant L-1 petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003).

Moreover, each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. The prior nonimmigrant approvals do not preclude CIS from denying an extension petition. *See e.g. Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The approval of a nonimmigrant petition in no way guarantees that CIS will approve an immigrant petition filed on behalf of the same beneficiary. CIS denies many I-140 petitions after approving prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 25; *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d at 22; *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. at 1103.

Furthermore, if the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Due to the lack of required evidence in the present record, the AAO finds that the director was justified in departing from the previous nonimmigrant approvals by denying the present immigrant petition.

Finally, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Based on the foregoing discussion, the petitioner has not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. Accordingly, the director's revocation of approval of the petition was properly based on "good and sufficient" cause. For this reason, the appeal will be dismissed.

The petition approval will be revoked 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 of February 14, 2006 is affirmed and the approval of the petition is revoked.

**ORDER:** The appeal is dismissed.