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U.S. Citizenship  
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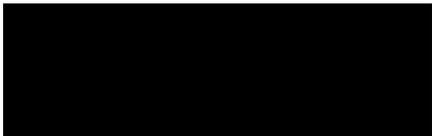
FILE: WAC 03 195 53684 Office: CALIFORNIA SERVICE CENTER Date: **AUG 06 2007**

IN RE: Petitioner:  
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, California Service Center. The petitioner filed an appeal with the Administrative Appeals Office (AAO), which withdrew the director's decision and remanded the matter for further consideration and entry of a new decision. After requesting additional evidence, the petition was denied by the director and certified to the AAO for review. The director's decision will be affirmed. The petition will be denied.

The petitioner was incorporated on January 13, 2000 in the State of California and is engaged in the import and wholesale of appliances, restaurant equipment, rice cookers, vacuum bottles, air pots, and other general merchandise. It seeks to employ the beneficiary as its president/general manager. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The petitioner subsequently filed an appeal with the AAO, arguing that the denial was arbitrary and capricious and violated the due process rights of the petitioner and the beneficiary. Upon review, the AAO noted that the director's decision failed to articulate the reasons for the denial. The AAO withdrew the director's decision of July 17, 2004, and remanded the matter for further consideration and entry of a new decision. After issuing a request for additional evidence on August 26, 2005 and reviewing the petitioner's response, the director again denied the petition, determining that: (1) the beneficiary would not be employed in a managerial or executive capacity; and (2) the petitioner failed to establish that a qualifying relationship existed between the petitioner and the foreign entity. As directed, the decision was certified to the AAO for review.

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

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

\* \* \*

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

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

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

Prior to addressing the issues, the AAO must emphasize that the critical facts to be examined are those that were in existence at the actual time of filing the petition. It is a long-established rule in visa petition proceedings that a petitioner must establish eligibility as of the time of filing. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971); *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

If the petitioner or beneficiary become eligible under a new set of facts, the proper course of action is to file a new petition. Despite the previous denial, there is no bar to the petitioner's filing of a new petition supported by new evidence of eligibility.

The first issue in this matter is whether 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.

In a letter dated June 8, 2003, the petitioner provided a general overview of the beneficiary's duties, which claimed that as President and General Manager, the beneficiary supervised four persons, including management level employees. An organizational chart submitted with the petition outlined the organizational structure of the petitioner, and indicated that the beneficiary oversaw three employees who worked in sales, finance, and administration. Without issuing a request for additional evidence, the director denied the petition, and provided a vague and generalized explanation for his determination.

The petitioner subsequently filed an appeal with the AAO, arguing that the denial was arbitrary and capricious and violated the due process rights of the petitioner and the beneficiary. The AAO withdrew the director's decision of July 17, 2004, and remanded the matter for further consideration and entry of a new decision.

In a request for evidence issued on August 26, 2005, the director requested detailed information pertaining to all aspects of the petitioner's business, including the business structure and ownership of both the U.S. and foreign entities. With regard to the managerial and/or executive capacity of the beneficiary, the director requested an organizational chart for the petitioner, demonstrating the managerial hierarchy of the petitioner as of the date of the petition's filing. The director requested that the chart include the names of all executives, managers, supervisors, and employees within each department or subdivision, and that it clearly identify the beneficiary's position in the chart. The director also required the petitioner to list all employees under the beneficiary's supervision, along with the source of remuneration for all employees and an explanation as to whether these employees were on salary, wage, or paid by commission.

Additionally, the director requested a more detailed description of the beneficiary's duties in the United States, including a specific overview of a "typical" workday. Finally, the director requested copies of the petitioner's California Employment Development Department (EDD) Form DE-6, Quarterly Wage reports, for all employees for the last eight (8) quarters that were accepted by the State of California. The director stipulated that these documents were to be submitted in a sealed EDD envelope stamped with an official EDD stamp certifying that the documents were full, true and correct copies.

The petitioner, through counsel, submitted a response dated November 9, 2005. With regard to the beneficiary's duties, the petitioner submitted a letter dated November 3, 2005 from the petitioner's Sales Department Manager, [REDACTED], which stated the following:

As President/General Manager of [the petitioner], [the beneficiary] is responsible for directing the overall management of [the petitioner], establishing goals and policies, supervising managerial level personnel, and exercising discretion over day-to-day operations of the company. On a "typical day," [the beneficiary] is responsible for the following duties:

1. Reviews daily sales and activity reports and inventory of goods;
2. Meets with [REDACTED] the treasurer, and reviews financial reports and discusses A/R and A/P balances;
3. Reviews customer accounts to keep track of sales, delivery, and volume of business activity;
4. Coordinates and directs activities involving import of goods from China such as purchasing, wiring of funds, and matters involving the customs agency;
5. Confers with employees regarding products, sales and marketing strategies, and customer accounts;
6. Directs the sales department to research new products and vendors in China and the United States;
7. Assigns duties and delegates responsibilities to the sales manager, treasurer and secretary, and coordinate functions among departments; and
8. Negotiates and enters into contracts with key vendors such as [REDACTED] Corporation and [REDACTED] Appliance in China, and Aroma and Maxi-Matic in the United States.

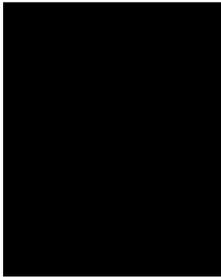
[The beneficiary] also prepares and submits reports to the directors of the parent company in China on a weekly basis and periodically performs employee evaluations to ensure that all employees follow established rules, policies and procedures. [The beneficiary] has the final authority to hire and fire employees and to exercise discretion in promotion and remuneration.

The petitioner's organizational chart indicated that the organization was overseen by the beneficiary as president. Directly under the beneficiary's control were two employees: [REDACTED], Treasurer/CFO and head of the accounting department as well as Secretary and head of the administrative department; and [REDACTED], Sales Manager and head of the sales department. According to the chart, [REDACTED] is the only employee who oversees a subordinate staff, and appears to supervise the following persons in the sales department:

1. [REDACTED], Sales Representative
2. [REDACTED], Sales Representative
3. [REDACTED], Warehouse Control
4. [REDACTED], In-Office Sales

In addition, [REDACTED] in the position of Warehouse Control, appears to oversee [REDACTED] in a position identified as "Delivery."

An additional document was submitted, which claimed that all employees were on salary, and that each employee possessed the following educational credentials:



B.A  
A.A.  
H.S  
A.A.  
A.A.  
A.A.  
A.A.

EDD forms for the previous 7 quarters were also submitted, beginning with the quarter ending September 30, 2003, and the petitioner also submitted its most recent return for the quarter ending September 30, 2005.

On December 14, 2005, the director denied the petition, finding that the petitioner had failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. The director noted that updated description of the beneficiary's duties was vague and additionally identified duties not traditionally considered to be managerial or executive. In addition, the director noted discrepancies between the organizational chart submitted in response to the request for evidence and the chart originally submitted with the petition, and further noted that the omission from the record of the EDD for the second quarter of 2003 made it impossible to verify the exact composition of the petitioner's staff at the time of the petition's filing on June 19, 2003. The director relied upon the previously-submitted return in the record for the quarter ending March 31, 2003, as well as the return for the quarter ending September 30, 2003, as a means of verifying the employees of the petitioner at the time of filing. Finally, the director noted that based on the apparent employment structure of the petitioner at the time of filing, it did not appear that the beneficiary oversaw a staff of managerial, supervisory, or professional employees.

Upon review, the AAO concurs with the director's findings. The first basis for the director's denial was the petitioner's vague description of the beneficiary's duties. Although the petitioner provided an updated description of the beneficiary's tasks, including an overview of a "typical" workday for the beneficiary, the director found that the description provided was nondescript and also seemed to identify duties not typically reserved for managers or executives. The director concluded that based upon the evidence submitted, it did not appear that the beneficiary would be primarily engaged in qualifying managerial or executive duties. The AAO agrees.

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

In both the initial letter of support and in response to the request for evidence, the description of duties provided simply adopts many of the key phrases used in the regulatory definitions of managerial and executive capacity. As noted by the director, general statements such as “directing the overall management of [the petitioner],” “establishing goals and policies,” “supervising managerial level personnel,” and “exercising discretion over day-to-day operations of the company overseeing the entire operation” do little to clarify the exact nature of the beneficiary’s duties. 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. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). 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. at 1108.

Although the petitioner provided an overview of a “typical” day for the beneficiary in its November 3, 2003 letter, the duties claimed therein are more akin to tasks performed by sales and marketing staff as opposed to employees primarily engaged in managerial or executive duties. As noted by the director, tasks such as “negotiat[ing] and enter[ing] into contracts with key vendors,” “review[ing] daily sales and activity reports and inventory of goods,” and “review[ing] customer accounts to keep track of sales, delivery, and volume of business activity” are not considered to be managerial or executive in nature. On the contrary, participation in such responsibilities is normally reserved for lower level sales or marketing personnel who are dedicated to acquiring new business and clients and performing necessary customer service activities. 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).

The second basis for the director’s denial was the issue regarding the beneficiary’s subordinate staff and whether these employees, by virtue of being managerial, supervisory, or professional employees, adequately relieved the beneficiary from performing non-qualifying duties so that he could devote his time to managerial and/or executive employees. There were two parts to the director’s analysis of this issue. First, the director looked at the organizational structure of the petitioner at the time the petition was filed on June 19, 2003. Although an updated organizational chart was submitted in response to the request for evidence, the director noted that the newly-submitted chart demonstrated the petitioner’s current hierarchical structure, and not the structure of the petitioner at the time of filing as specified in the request for evidence.

The organizational chart submitted with the petition indicated that the beneficiary supervised [REDACTED] as secretary and manager of the financial department, and [REDACTED] as manager of the sales department. The chart further indicated that [REDACTED] supervised [REDACTED] in a position simply identified as “sales.” The petitioner’s EDD for the first quarter of 2003 ending on March 31, 2003 confirmed that these four persons were employed by the petitioner at that time.

In the December 14, 2005 denial, the director compared this original organizational chart to the chart submitted in response to the request for evidence, and noted that several additional employees were now included in the organizational hierarchy. A review of the EDD forms submitted in response to the request for evidence indicated that these new employees were hired after the filing of the petition. Noting that the petitioner had not submitted an organizational chart for the second quarter of 2003 (ending June 30, 2003), the director concluded that to verify the actual number of employees of the petitioner as of the date of filing, he would refer to the EDD forms for the first and third quarters of 2003. Upon review, the director noted that the returns for both quarters affirmed the employment of the four claimed persons, in addition to a fifth employee during the third quarter identified as [REDACTED]. Since this person was not listed as an employee at the time of the petition's filing, the director correctly chose to evaluate the petitioner's organizational structure based on the original organizational chart submitted.

The director reviewed the position descriptions of each of the beneficiary's subordinate employees. With regard to [REDACTED] the manager of the accounting and administrative departments, the director concluded that the brief description of her duties, which specifically claimed that she "managed" each department, was unclear and confusing since she essentially oversaw two departments with no subordinate employees or additional staff members. Regarding [REDACTED] the director noted that while the organizational chart indicated that he managed the sales department and oversaw one sales person, this claim was likewise confusing since the sales person, [REDACTED] was recently identified as a "delivery" person in response to the request for evidence, thereby raising issues with regard to the legitimacy of the petitioner's claims.

The AAO again concurs with the director's conclusions on this issue. Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the director requested the educational backgrounds for each employee in the request for evidence, and the petitioner responded by stating that [REDACTED] possessed a "B.A." whereas [REDACTED] and [REDACTED] possessed "A.A." degrees. The petitioner, however, did not provide any evidence to corroborate these claims, such as diplomas or educational transcripts. More importantly,

however, the petitioner did not provide the level of education required to perform the duties of their respective positions, thereby precluding a finding that a bachelor's degree is actually required as a prerequisite to performing the duties of the stated positions. As a result of this lack of documentation, the petitioner has not established that these employees possess or require an advanced degree, such that they could be classified as professionals.

Furthermore, as discussed by the director in the December 14, 2005 denial, the petitioner has not shown that any of these employees supervised subordinate staff members or managed a clearly defined department or function of the petitioner at the time of filing, such that they could be classified as managers or supervisors. Although the petitioner claimed that [REDACTED] "managed" the accounting and administrative departments, no additional information was provided to explain how she managed two departments without the assistance of subordinate employees. 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)). With regard to [REDACTED] and his supervision of the sales department, it does appear that one subordinate sales person worked under him at the time of filing. However, there are two deficiencies in this claim.

First, as noted by the director, it is unclear why the subordinate sales person is identified as "delivery" in the most recent organizational chart, thereby raising questions with regard to the true nature of his position at the time of filing. The AAO notes that this employee's salary has remained consistent for the past two years and, while his current employment capacity is not relevant to this analysis, it suggests that the petitioner may have adjusted the titles of its employees to conform to an idealized employment structure for purposes of meeting the regulatory requirements. 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).

Second, the petitioner provided no details in the initial petition with regard to the duties of or [REDACTED] or [REDACTED]. Merely claiming that [REDACTED] managed the sales department, and adding a person to the organizational chart under his control with the title of sales person, is insufficient to demonstrate that [REDACTED] is thus a manager or supervisor within the organizational hierarchy. As stated above, 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. As a result, the petitioner failed to establish that the beneficiary supervised a subordinate staff of managerial or supervisory employees. Thus, the director correctly concluded that the petitioner failed to show that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

Finally, the director concluded that the beneficiary was not managing or directing the management of an essential function of the organization, but instead was merely involved in the performance of routine operational activities. 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 written job offer that clearly describes the

duties to be performed, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. 8 C.F.R. § 204.5(j)(5).

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)).

In this matter, the petitioner did not claim that the beneficiary was a function manager, but the director chose to evaluate the evidence under this alternative criterion. Based on the evidence contained in the record, and the lack of a specific claim and/or evidence in support of the notion that the beneficiary was a function manager, the director concluded that the beneficiary was not managing an essential function of the organization.

The regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(12). 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). Although the petitioner established, in response to the request for evidence, that it has since expanded its organizational hierarchy to include additional sales personnel, the fact remains that at the time of filing in June 2003, the petitioner did not have the organizational complexity to support the beneficiary in a qualifying capacity. For the reasons set forth above, the director correctly concluded that the beneficiary was not employed in the United States in a primarily managerial or executive capacity.

The second issue in the present matter is whether the petitioner is the subsidiary of the foreign employer. The regulation at 8 C.F.R. §204.5(j)(2) defines the term "subsidiary" as:

[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 this case, the petitioner claims to be the subsidiary of Hainan Huaran Industrial & Trading Co., Ltd. ("Hainan"), located in Haikou City, China. The petitioner claims that Hainan owns 100% of the U.S. entity, by virtue of its purchase of all 50,000 shares issued by the petitioner on in December 1999. The initial petition contained the following corporate documentation:

1. Share Certificate (1), dated January 20, 2000, indicating that Hainan owned 50,000 shares of the petitioner;
2. Stock Ledger confirming 50,000 shares were transferred to Hainan on January 20, 2000;

3. Organization Minutes of the Board of Directors of the petitioner dated January 14, 2000, confirming 50,000 shares would be issued to Hainan in exchange for \$500,000;

In a letter in support of the initial petition, dated June 8, 2003, the petitioner claimed that Hainan transferred \$600,000 to the petitioner via wire transfer on three separate occasions in December 1999, claiming that each transfer was initiated from Standard Charter in Hong Kong to Washington Mutual Bank in the United States. The petitioner then claimed that on April 14, 2000, \$506,000 was transferred to China Trust Bank, and concluded that \$500,000 of this amount was used for the purchase of the 50,000 shares of the petitioner's stock. The petitioner submitted copies of three Telegraph Transfer Request Forms from Standard Charter, as well as a copy of the petitioner's China Trust bank statement dated April 28, 2000. The bank statement demonstrated the deposit of \$505,855.36 on April 14, 2000, but the source of the deposit is not identified. The three Telegraph Transfer Request Forms are handwritten, and only one of the three forms has a legible date of December 24, 1999. Furthermore, the applicant on each form is identified as [REDACTED] and [REDACTED] and the beneficiary on each is listed as [REDACTED] and [REDACTED].

In the request for evidence dated August 26, 2005, the director requested clarification with regard to the claimed qualifying relationship between the parties, and in its November 9, 2005 response, the petitioner resubmitted the stock certificate, stock ledger, and minutes of the organizational meeting.

The director concluded that the petitioner had not establish that Hainan actually paid for its shares in the petitioner, thereby failing to satisfy the crucial element of ownership. As previously stated, the petitioner did not submit a brief or written statement to address the director's basis for the denial. Upon review of the evidence contained in the record, the AAO concurs with the director's finding with regard to this matter.

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 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*, 19 I&N Dec. at 595.

Upon review of the record of proceeding, the petitioner has not established that a subsidiary relationship exists between the parties, since the petitioner has failed to demonstrate that Hainan actually owns the U.S. entity.

As ownership is a critical element of this visa classification, the director may reasonably look beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. Evidence of this

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<sup>1</sup> Absent evidence to the contrary, [REDACTED] are presumably the same person. It is also presumed that [REDACTED] are the same person, the beneficiary of this nonimmigrant visa petition.

nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

In this case, the petitioner has provided documentary evidence outlining the shareholder interest of Hainan in the U.S. entity, and has supplemented this evidence with explanatory statements which discuss the manner in which consideration was tendered via wire transfer. Specifically, the petitioner claimed that three transfers made in December of 1999 represent the \$500,000 tendered by Hainan to the petitioner for the purchase of 50,000 shares of stock. After the director denied the petition for not establishing the qualifying relationship, the petitioner failed to submit any evidence in support of this claim.

Upon review, the documents submitted as evidence of the transfer of these funds are not sufficient to establish Hainan's purchase of the petitioner. First, two of the three documents are not dated. Second, all three of the documents indicate that the initiators and beneficiaries of the transfers are individuals, not corporate entities and specifically not Hainan or the petitioner. Finally, the transfers allegedly went to an intermediary bank, namely Washington Mutual, before eventually being transferred to the petitioner's bank account at China Trust Bank.

The evidence submitted is simply insufficient to establish that Hainan transferred \$500,000 to the petitioner in exchange for 50,000 shares in the petitioner. The wire transfer documents make no reference to the petitioner or Hainan, and more importantly they do not show the actual receipt of these funds by Washington Mutual Bank as alleged. Instead, the wire transfer documents demonstrate that the beneficiary was the source of the transferred funds. Furthermore, there is no indication that the petitioner had an active account at Washington Mutual Bank. Finally, the April 14, 2000 deposit of \$505,855.36 into the petitioner's account at China Trust Bank does not indicate the source of this deposit, from where it originated, or the manner in which the funds were acquired. The petitioner's claim in the June 8, 2003 letter that this deposit represents Hainan's purchase of the petitioner's stock is simply insufficient without documentation to support this contention. Again, 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.

In addition, the AAO notes another discrepancy in the record not addressed by the director. As stated above, the petitioner claims to be owned in its entirety by Hainan Huaran Industrial & Trading Co., Ltd. The stock certificate, stock ledger, meeting minutes, and letters of the petitioner and counsel reaffirm this claim throughout the record. Upon review of the petitioner's Form 1120, U.S. Corporation Income Tax Return for 2001, 2002 and 2003, the petitioner claims on Schedule K, Question 5, that "Hainan Sino Resource Industrial & Trading Co., Ltd." is its owner. (Emphasis added). 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).

Based on the director's conclusions and the unresolved discrepancy noted above, the AAO concurs with the director's finding that a subsidiary relationship has not been demonstrated in this matter.

As a final note, Citizenship and Immigration Services (CIS) records indicate that, although a second L-1 extension petition filed on behalf of the beneficiary in this matter was denied, an initial L-1 new office petition and a two-year L-1 extension petition were approved. With regard to the beneficiary's approved L-1 nonimmigrant classification, it should be noted that, in general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by 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 Form I-129 nonimmigrant petitions than Form I-140 immigrant petitions, some nonimmigrant L-1 petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30 (recognizing that CIS approves some petitions in error).

Moreover, each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. The prior nonimmigrant approvals do not preclude 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 immigrant petitions after approving prior nonimmigrant I-129 L-1 petitions. See, e.g., *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 25; *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d at 22; *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. at 1103.

Furthermore, if the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that 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).

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).

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

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.

**ORDER:** The decision of the director dated December 14, 2005 is affirmed. The petition is denied.