



U.S. Citizenship  
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Services

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[REDACTED]

FILE: [REDACTED]  
SRC 05 108 51865

Office: TEXAS SERVICE CENTER Date: AUG 27 2007

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:

[REDACTED]

PUBLIC COPY

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



**DECISION:** The Director, Texas Service Center, denied the employment-based visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the 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 Georgia that is engaged in the import and wholesale of traditional handicrafts, jewelry, clothing and leather goods. The petitioner represents itself as a subsidiary of the beneficiary's foreign employer, and seeks to employ the beneficiary as its vice-president.

The director denied the petition concluding that the petitioner had failed to demonstrate that the beneficiary had been employed by the foreign entity or would be employed by the United States entity in a primarily managerial or executive capacity.

On appeal, counsel for the petitioner contends that in its denial, United States Citizenship and Immigration Services (USCIS) ignored "a substantial portion of the petition and its voluminous supporting documents." Counsel also claims that because USCIS had previously approved an L-1A nonimmigrant petition filed by the petitioner for the benefit of the beneficiary, the I-140 petition could only be denied if USCIS found gross error in the approval of the nonimmigrant petition or a substantial change in the facts of the I-140 petition. Counsel submits a brief and additional documentary 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):

\* \* \*

(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.

The first issue in this proceeding is 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 Form I-140 on March 7, 2005, noting the beneficiary's proposed employment as the vice-president of the sixteen-person corporation, during which she would direct and coordinate corporate "activities," and assist the president "in formulating policies and administering the organization." In an appended letter, dated February 28, 2005, the petitioner's chief executive officer identified the beneficiary as a "second ranking executive officer" of the petitioning entity, a position that would encompass "formulating

and administering [ ] commercial policies" and "performing an overall administration and executive decision-making in [the petitioner's] business activities."

As evidence of the beneficiary's proposed position, the petitioner submitted a copy of the July 2001 letter that had been submitted with its earlier L-1A nonimmigrant petition requesting employment of the beneficiary as the company's vice-president. In the letter, the petitioner provided the following description of the beneficiary's proposed employment:

The position of Vice President requires the [beneficiary] to direct and coordinate activities of [the] company's departments, and assist the chief executive officer (President) in formulating and administering organization[al] policies. The Vice President participates in formulating and administering company policies and developing long-range goals and objectives. Further, the Vice President is expected to review analyses of activities, costs, [and] operations, and forecast data to determine respective department progress toward stated goals and objectives. Confers with [the] President and other administrative personnel to review achievements and discuss required changes in goals or objectives resulting from current status and conditions. [The] Vice President may perform duties of [the] President during [the president's] absence. Performing the above duties, the Vice President is expected to exercise wide latitude in discretionary decision-making and to receive only general supervision from the President and the Board of Directors.

In an attached resume, the beneficiary outlined her responsibilities as Vice-President in the following manner:

I direct and coordinate the activities of the company and assist the President in formulating and administering organization[al] policies. Based on my extensive experience on the international market, I advise on the development of long-range goals and objectives. I review analyses of the corporation's operations as well as forecast data to determine our progress toward stated goals and objectives. Being proactive and positive in my personal managerial approach and having the support of the finest professional team of [the petitioning entity], I firmly believe in our growth and achievement of our great goals in the future.

On May 7, 2005, the director issued a request for evidence, noting that in order to establish the beneficiary's eligibility for the requested classification, the petitioner is obligated to demonstrate that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

In his August 3, 2005 response, counsel submitted a copy of a July 20, 2005 letter, in which the petitioner summarized essentially the same job responsibilities of the beneficiary as those catalogued above, including: directing business activities; formulating organizational policies; developing long-term goals; reviewing financial analyses; reviewing corporate achievements and changes with the President; and making personnel decisions. As evidence of the beneficiary's proposed managerial or executive employment, counsel also submitted copies of the petitioner's Certificate of Existence and State of Georgia Business Information Printout, as well as a copy of the beneficiary's 2004 federal individual income tax return. The AAO notes that the beneficiary was identified on these documents as either the chief financial officer or vice-president of the petitioning entity.

On September 14, 2005, the director issued a second request for evidence, directing the petitioner to submit a "definitive statement" of the beneficiary's proposed employment, including: (1) her position title; (2) job duties and the percentage of time the beneficiary would devote to performing each; (3) the subordinate managers, supervisors, and employees who would report directly to the beneficiary and a brief job description for each; (4) the essential function managed by the beneficiary if she is not managing subordinate workers; (5) the qualifications necessary to perform in the position of vice-president; and (6) the level of authority held by the beneficiary.

Counsel for the petitioner responded in a letter dated December 12, 2005. In an appended statement, the petitioner again provided a similar description for the position of vice-president as the job descriptions previously stated above. The petitioner further outlined the following job duties related to the beneficiary's proposed position:

I. *Strategic Business Planning and Policy Creation*

Approximate time allotment – 30%

- Executive Authority in Strategic Planning and Formulation of Policies  
The Vice President [chief financial officer] (CFO) directs a key executive function as [a] liaison with the foreign (parent) company, which provides the major part of [the petitioner's] operational and investment financing as well as 100% of the company's wholesale inventory. In that regard, the Vice President (CFO) is a major source of authority in the formulation of the corporate policies of [the petitioning entity]. Such authority warrants [sic] that the executive decisions, which are ultimately sanctioned/endorsed by the Company's President, are in compliance with the policy and business strategy guidelines of the foreign (parent) company, which owns 50% of the corporate shares and holds controlling authority over the corporate policies of [the petitioner].
- Confer with the Company's Board of Directors to identify strategic business objectives.
- Drafts strategic policies and objectives of the company in accordance with the Board's directives and introduces plans and strategies for sanction/endorsement by the President.

II. *Operational Policy Implementation and Corporate Administration*

Approximate time allotment – 15%

- Monitor the implementation of the organizational policies and coordinate functions and operations between departments within the company and between the company and the foreign parent-corporation. Hold executive authority to implement and alter business procedures and any and all related authority to make changes in [the] company's financial flows and human resources.
- Review activity reports and financial statements to determine progress and status in attaining objectives and revised objectives and plans in accordance with current conditions.

III. *Financial Executive Authority*

Approximate time allotment – 35%

- Direct and coordinate formulation of financial programs to provide funding for strategic projects to maximize returns on investments, and to increase productivity.
- Introduces budgets on corporate level for endorsement by the CEO and authorizes budgets on department and project level[.]
- Communicate with banks, financial institutions and government officials (China/Asia/Pacific Region) on executive level to secure corporate funding and investments. Holds the authority to sign contracts and accept financial obligations on behalf of the company.
- Confer budgeting programs and consolidated budgets and presents consolidated financial reports to the Board of Directors of the company as well as to the executive management of the foreign (parent) company[.]

IV. *Executive Corporate Representation*

Approximate time allotment – 20%

- Attend international and domestic business forums as well as bilateral meetings with representatives of domestic and foreign entities, local or central governments to promote the company and establish business relationships on highest executive level and negotiate strategic exchange, investment, concessions, and etc. The executive representations function for the particular position is focused on Asia and the Pacific Region. Holds the authority to sign contracts and accept financial and/or other commercial obligations on behalf of the company.

The petitioner indicated that in this high-level executive position, the beneficiary would exercise wide latitude in discretionary decision-making and would receive only general supervision from the company's CEO and board of directors.

With respect to the company's organizational hierarchy, counsel submitted an organizational chart depicting both the petitioner's actual and proposed staffing levels. As the analysis of the beneficiary's employment capacity is restricted to the facts at the time of filing, the AAO will focus solely on the staffing levels maintained by the petitioner on the filing date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971)(finding that 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). Based on the organizational chart, during 2005, the petitioner employed: a chief executive officer; the beneficiary as vice-president and chief financial officer; an office administrator; a market analyst import-export manager; an inventory and shipping supervisor; a varying number of four to six part-time or full-time dispatch, inventory, and general labor employees; a vice-president of sales; and four regional sales office managers. According to the organizational chart, the beneficiary would not exercise sole managerial authority over any direct subordinate employees. It appears, however, that the beneficiary and the vice-president of sales would share managerial authority over the market analyst import-export manager and the four regional sales office managers.

In a decision dated February 10, 2006, the director concluded that the petitioner had not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The director noted that the offered job descriptions did not sufficiently portray the beneficiary's assignment in

the United States entity, or that the beneficiary would perform primarily managerial or executive job duties. The director recognized the executive title assigned to the beneficiary, but stated that the petitioner must demonstrate that the lower-level productive tasks of the petitioner's business do not comprise the primary part of the beneficiary's time. The director also noted that while the beneficiary would make decisions with respect to the "general operation of the company, it must be demonstrated that such decisions occupy the majority of his/her time." Consequently, the director denied the petition.

Counsel for the petitioner filed an appeal on March 15, 2006, claiming that the director's denial of the petition was based on an erroneous review of the facts and disregard for the documentation submitted in support of the beneficiary's employment as an executive. Counsel contends that a substantial amount of the evidence presented for review by the director was not addressed in the director's decision, thereby resulting in a generalization of the beneficiary's employment and erroneous denial of the petition.

In an appellate brief, dated March 28, 2006, counsel summarizes the documentary evidence submitted by the petitioner, including the job descriptions and corporate documents bearing the beneficiary's name and "designating her professional capacity." Counsel states that the director neglected to discuss, challenge or discredit any of the submitted evidence, which counsel contends "clearly pointed out the executive position of the beneficiary in the U.S. entity by presenting a definitive statement of her executive duties and her exact place in the corporate hierarchy . . . ."

Counsel further notes the beneficiary's current L-1A status and employment with the petitioning entity, and stated that the beneficiary's proposed employment under the I-140 petition would remain unchanged. Counsel contends that absent a finding of gross error in the approval of the original L-1A petition or a change in the beneficiary's position, USCIS may not deny the present immigrant visa petition.

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).

Notwithstanding the petitioner's three opportunities to submit a descriptive account of the beneficiary's proposed position, a significant amount of the offered documentary evidence relies on vague suggestions of managerial or executive employment. Specifically, in its three separate job descriptions, the petitioner repeatedly stated that the beneficiary would be responsible for formulating company and commercial policies, "developing long-range goals and objectives," [r]eview[ing] analyses or reports pertaining to corporate activity, "[conferring] with [the] President and other administrative personnel to review achievements and discuss required changes in goals or objectives," and performing the duties of the president during his absence from the company. The petitioner's vague representations do not address such details as: what particular "company" and "commercial policies" are formulated by the beneficiary; whether the beneficiary's authority to develop these policies, goals and objectives is all encompassing and supercedes that of the president; or from what departments or personnel the reports reviewed by the beneficiary are derived. The offered job descriptions fall significantly short of identifying the specific managerial or executive job duties to be performed by the beneficiary as vice-president. 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).

In establishing the beneficiary's purported employment as an executive, the petitioner also relies on such representations as the beneficiary's wide latitude in discretionary decision-making, the general supervision of the beneficiary's actions by the petitioner's president and board of directors, and her authority to establish the company's goals and policies. The AAO notes that merely reciting portions of the statutory definition of "executive capacity" is not sufficient to establish the beneficiary's employment in a qualifying 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 at 1108. The actual duties themselves reveal the true nature of the employment. *Id.*

Similarly, the additional "detailed" outline of job duties offered by the petitioner in response to the director's second request for evidence is not sufficient to establish the beneficiary's employment as a manager or executive. The AAO recognizes that while the supplemental job description is slightly longer than the previously offered job descriptions and classifies the beneficiary's job responsibilities into four individual categories, it contains similar broad representations of the beneficiary's job duties. As in the original job descriptions, the petitioner focused on the beneficiary's authority to formulate corporate policies, make "executive decisions," identify "strategic business objectives," implement or administer the organizational policies, and review reports and financial statements. Again, these broad representations fail to provide a sufficient depiction of the specific managerial or executive tasks to be performed by the beneficiary on a daily basis. The actual duties themselves reveal the true nature of the employment. *Id.*

The AAO recognizes that unlike in the previous job descriptions, the subsequent outline of job duties identified the beneficiary as devoting 35 percent of her time to the "financial executive" function of the company, during which she would function in a dual role as the company's chief financial officer and would hold such job responsibilities as: coordinating the formulation of financial programs; introducing budgets; maintaining "executive level" communications with outside parties to secure corporate financing; binding the petitioning entity in financial obligations; and presenting financial reports to the petitioner's board of directors. The AAO calls attention to the petitioner's staffing levels at the time of filing, and notes that the beneficiary was not directly managing or supervising any subordinate employees engaged in performing financial functions of the company. Nor did the petitioner claim to utilize any outside workers who would be performing its financial functions. In light of the minimal support staff to perform day-to-day financial tasks of the petitioning entity, it is questionable whether the beneficiary's time would be limited to primarily supervising the company's financial function, as suggested by the petitioner, or whether the beneficiary would be personally responsible for performing related non-managerial and non-executive tasks.

The AAO recognizes that the company's regional sales managers may *periodically* prepare operational financial reports for the beneficiary. Accordingly, it would appear that if not for the periodic assistance of the regional sales managers, the beneficiary would be personally responsible for performing this non-qualifying task. Additionally, the beneficiary's responsibility of personally communicating with financial institutions for corporate funding suggests a non-managerial or non-executive role, particularly since the petitioner has failed to document how these communications are on an "executive level." Accordingly, the petitioner has not sufficiently documented the beneficiary's claimed executive authority over the company's financial function.

Moreover, the petitioner's proposal to hire a business development, new products, and markets manager, as well as personnel who would be engaged in performing the company's advertising and marketing logistics and customer support and service logistics, all of whom would occupy positions subordinate to the beneficiary, raises the question of who is presently performing these tasks for the petitioning entity. The petitioner has not addressed what appears to be a deficiency in its staffing levels.

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.*

Here, in light of the observations made above with respect to the petitioner's staffing levels, the record raises doubt as to whether the company's reasonable needs as an importer and wholesaler, which presumably encompasses such tasks as marketing its products and services and offering customer support, might plausibly be met through the services of its staff maintained on the filing date. Additionally, the petitioner's initial representation of its staffing levels on the date of filing is questionable in light of the significant fluctuation in the number of employees following the filing of the petition. Specifically, the petitioner represented the employment of sixteen employees on the Form I-140, while the second quarterly tax return indicates a staff of six, and the December 2005 employee list includes ten names. 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).

The AAO acknowledges the February 19, 2007 letter composed by the United States company Basil Capital, LLC, and offered by the petitioner on appeal in support of the beneficiary's eligibility for the requested immigrant visa. In the letter, Basil Capital, LLC addresses its current business relationship with the foreign entity, which it indicated began in October 2006, and states that the beneficiary has been "our point of contact and main decision maker for [the foreign entity]." Basil Capital, LLC expresses its need to continue a relationship with the foreign entity and the beneficiary in order to complete community and county government-supported projects, in which the foreign entity is an investor.

The letter from Basil Capital, LLC is not probative of the beneficiary's employment in the United States entity as a manager or executive. As the content of the letter is limited to Basil Capital, LLC's relationship with the foreign entity and likewise, its relationship with the beneficiary as the foreign company's "main decision maker," it does not illustrate the beneficiary's employment in the United States or support the petitioner's claims of employing the beneficiary as a manager or executive.

The petitioner's failure to corroborate the beneficiary's purported executive authority over the company's finance function, in combination with its vague claims of employing the beneficiary in a primarily executive capacity, restrict the analysis of determining the capacity in which the beneficiary would be employed. The record, as presently constituted, does not comport with the petitioner's claims of employing the beneficiary in a primarily managerial or executive capacity. 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. *Id.* at 591. Accordingly, the appeal will be dismissed.

The second issue in this proceeding is whether the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity.

In a July 29, 2002 letter submitted with the petitioner's L-1A petition to employ the beneficiary as a nonimmigrant manager or executive, the foreign entity represented the beneficiary as occupying the position of president, during which she developed policies and objectives of the company, coordinated functions between the company's departments, reviewed activity reports and financial statements, coordinated financial programs, and held decision-making authority with respect to the business.

In response to the director's request for evidence of the beneficiary's former employment as a manager or executive of the foreign entity, the petitioner submitted a list of job duties considerably similar to that provided for the beneficiary's employment as the petitioner's vice-president. The AAO notes, however, a slight difference in the amount of time devoted to each task. Specifically, 60 percent of the beneficiary's time was divided equally between "operational policy implementation and corporate administration" and "financial executive authority." An attached organizational chart of the foreign entity depicted a staff comprised of approximately five vice-presidents, who were considered executive level management, seven department administrators, twenty operational managers, and eighty-five field managers supervising such functions as manufacturing, sales, marketing, public relations, advertising, and shipping.

In her February 10, 2006 decision, the director concluded that the beneficiary had not been employed by the foreign entity in a primarily managerial or executive capacity. The director stated that the foreign job description "indicat[ed] that [the beneficiary's] duties abroad were composed primarily of the daily productive tasks such as the establishment and periodical optimization of personnel recruitment standards, guidelines for promotion of staff or implementation of disciplinary measures, training, and performance evaluation programs." The director concluded that the majority of the beneficiary's time had been devoted to the company's business marketing, staff recruitment, and supervision.

On appeal, counsel for the petitioner challenges the director's review of the record of proceeding, claiming, as in the case of the beneficiary's proposed employment in the United States, that the director had failed to consider documentation submitted in support of the beneficiary's overseas employment as a manager or executive. Counsel references letters offered by the foreign entity describing the beneficiary's position as president, as well as corporate documents and brochures that identified the beneficiary as the company's president.

Upon review, the petitioner established that the beneficiary had been employed by the foreign entity in a primarily managerial or executive capacity. As a result, the director's decision with respect to this issue will be withdrawn. The AAO notes that 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 February 10, 2006 decision fails to adequately address the reasons for the denial of the I-140 petition.

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 AAO recognizes that, but for slight differences in a few of the job duties and the time allotted to the performance of each, the job descriptions offered for the beneficiary's employment in the United States and in the foreign entity are noticeably similar. However, in the analysis of the present issue, the petitioner has submitted evidence in the form of corporate brochures and documentation of staffing levels corroborating its claim that the beneficiary was employed by the foreign entity as a manager or executive. Whereas the petitioner's vague representations of the beneficiary's job duties and its staffing levels at the time of filing suggested that the beneficiary would perform non-qualifying tasks of the United States corporation, the multi-tiered organizational hierarchy of the foreign entity supports a finding that the company maintained a staff sufficient to support the beneficiary in a primarily managerial or executive capacity. Based on the representations, it does not appear that the beneficiary was responsible for performing non-managerial or non-executive tasks of the foreign entity. Accordingly, the director's decision with respect to this issue will be withdrawn.

Counsel emphasizes on appeal USCIS' prior approval of an L-1A nonimmigrant visa petition 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.

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. *See* 8 C.F.R. § 103.8(d). 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 petition. *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 petition was 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 approval 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).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

**ORDER:** The appeal is dismissed.