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U.S. Citizenship
and Immigration
Services

B4

FILE:

[REDACTED]
LIN 06 175 52089

Office: NEBRASKA SERVICE CENTER

Date: DEC 01 2008

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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "John F. Grissom", with a small "JFG" monogram below it.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, a Florida corporation, claims to be a car dealer and to have a qualifying relationship with the beneficiary's alleged employer in Venezuela. 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 director denied the petition concluding that the petitioner failed to establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

On appeal, the petitioner disputes the director's findings, asserts that the beneficiary will perform primarily qualifying duties, and submits a brief and additional evidence in support of its arguments.

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.

Title 8 C.F.R. § 204.5(j)(3) explains that a petition filed for a multinational executive or manager under section 203(b)(1)(C) must be accompanied by a statement from an authorized official of the "petitioning United States employer" which demonstrates that:

- (A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or
- (B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;
- (C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and
- (D) The prospective United States employer has been doing business for at least one year.

The primary issue in this proceeding is whether the petitioner provided sufficient evidence to establish that it will employ the beneficiary 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) 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), 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 does not clarify in the initial petition whether the beneficiary will primarily perform managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. A petitioner may not claim that a beneficiary will be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. Given the lack of clarity, the AAO will assume that the petitioner is claiming that the beneficiary will be employed in either a managerial *or* an executive capacity and will consider both classifications.

The petitioner described its business and staffing in a letter dated May 5, 2006 appended to the initial petition. The petitioner claims to employ four employees and three "independent contractors" in its sale of used automobiles. The petitioner also described the beneficiary's proposed duties in the May 5, 2006 letter as follows:

[The beneficiary] will oversee all aspects of the operation. He will: develop and maintain the vision of the Company; oversee marketing, product development, manufacturing, finance, and customer service; approve all financial obligations; seek business opportunities and strategic alliances with other organizations; plan, develop, and establish policies and objectives of business organization in accordance with board directives and company charter; direct and coordinate financial programs to provide funding for new or continuing operations in order to maximize return on investments and increase productivity.

He will have authority to enter and negotiate contracts on behalf of the Company. He will be in charge of:

- Planning, developing, and establishing long-range goals and objectives of business organization in accordance with board directives and corporation charter.
- Conferring with advisors to plan business objectives, to develop organizational policies to coordinate functions and operations, and to establish responsibilities and procedures for attaining objectives, and also in then implementing goals through subordinate administrative personnel and sub-contractors.
- All aspects of the Company's finance (budget and accounts receivable), administration, and marketing.
- Reviewing activity reports and financial statements to determine progress and status in attaining objectives and revising objectives and planning in accordance with current conditions.
- Directing and coordinating formulation of financial program to prove funding for new or continuing operations to maximize returns on investments, and to increase productivity.
- Promoting the Company by representing it before organizations and participating at various seminars, conventions, and trade shows.
- Liaison activities with the accountants and lawyers who contract with the Company.
- Hiring staff and other personnel actions, including promotions, transfers, discharges, or disciplinary measures.
- Administrative control and conformance with legal requirements of the firm.

The petitioner also submitted an organizational chart for the United States operation. The chart shows the beneficiary at the top of the organization directly supervising a secretary, a business consultant, a general manager, and a "financial department" worker. The "financial department" worker and general manager are both, in turn, portrayed as supervising subordinate workers. The petitioner also submitted job descriptions for the "head of financial department" and the "general manager." The "head of financial department," Alejandro Sanchez, is described as follows:

In charge of all financial matters of the company. Administration. Banking. Review documents to approve financing to customers. Provides management, financial and general counseling and training programs to the Company. Presentation of financial material, evaluation of current financial condition, and marketing products/services.

The general manager is described as follows:

Attend all regular meetings; Keep full and complete record of the doings of his office, and to render as often as may be required by the President, a full report of all operations during the period reported on; and annually, or oftener if required by the President, to make a synopsis of all reports; Keep the President fully advised as to the needs of the Organization within the scope of his duties and to furnish the President on or before the thirty-first day of December of each year a careful, detailed estimate in writing of the appropriations required during the next ensuing fiscal year for the proper conduct of all departments of the organization under his control[.]

On February 13, 2007, the director requested additional evidence. The director requested, *inter alia*, copies of the petitioner's 2006 Forms 1099 and W-2 and more detailed descriptions of the duties of all employees in the United States.

In response, the petitioner submitted a more detailed description of the beneficiary's proposed duties as follows:

EXAMPLES OF IMPORTANT AND ESSENTIAL DUTIES (55% of his time dedicated to these duties):

1. Responsible for the success of the company. He is in charge of the whole operation, supervising: Operations, marketing, strategy, financing, creation of company culture, human resources, hiring, firing, compliance with safety regulations, sales and Public Relations. (15%)
2. He is the contact person between the Company in Venezuela and the subsidiary in the United States. He plans, develop[s] and establish[es] policies to coordinate functions and operations of the company. (10%)
3. He sets strategy and vision. He delegates in a senior management team that will help to develop strategy. Decides, set budgets and hires a team to steer the company accordingly. (5%)
4. Hire, fire, and lead the management team (financial Manager, General Manager and Business Consultant). They, in turn, hire, fire, and lead the rest of the organization (Purchases and Sales). Resolve differences between senior team members, and keep them working together in a common direction. Set direction by communicating the strategy and vision of where the company is going. (10%)
5. Capital allocation. Set budgets within the firm. Fund projects which support the strategy, and ramp down projects which lose money or don't support the strategy. Consider carefully the company's major expenditures, and manages the firm's capital. (10%)
6. Identify opportunities to improve operations and service methods and procedures; assist in the implementation of goals, objectives, policies, and procedures for assigned areas to ensure quality service. (5%).

FINANCIAL, ADMINISTRATIVE AND BUDGETING DUTIES (45% of his time dedicated to these duties):

1. Direct and coordinate the formulation of financial programs to provide funding for new or continuing operations that can maximize returns. (15%)
2. Review contracts with agents, suppliers and clients (10%)
3. Develop, administer, monitor, and coordinate department budget; forecast funding needs for staffing, materials and suppliers; capital equipment and facility maintenance; monitor and approve expenditures; make recommendations as necessary. (10%)

4. Confers with management personnel to establish production and quality control standards, develop budget and cost controls, and to obtain data regarding types, quantities, specifications, and delivery dates of products ordered and serviced. (10%)

The petitioner also submitted job descriptions for the "head of financial department" and the "general manager." Although these job descriptions are materially identical to the descriptions submitted with the initial petition, the petitioner further indicated how much time the two subordinate workers will devote to each of the ascribed duties. Generally, the petitioner indicates that both the "head of financial department" and the "general manager" will primarily perform the tasks necessary to provide a service or to product a product.

On July 30, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

On appeal, the petitioner disputes the director's findings, asserts that the beneficiary will perform primarily qualifying duties, and submits a brief and additional evidence in support of its arguments.

Upon review, the petitioner's assertions are not persuasive in establishing that the beneficiary will be employed in a primarily managerial or executive capacity.

As a threshold issue, it is noted that business expansion plans or employees hired after the filing of the instant petition may not be considered by the AAO in determining whether the beneficiary will primarily perform managerial or executive duties in the United States. 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). A petitioner must establish eligibility at the time of filing. *Id.* Accordingly, only the organizational structure, positions, and actual employees in place at the time the petition was filed in September 2006 will be considered by the AAO in adjudicating the instant appeal.

In view of the above, in examining the executive or managerial capacity of the beneficiary, Citizenship and Immigration Services (CIS) will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The actual duties themselves 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 this matter, the petitioner's description of the beneficiary's job duties fails to establish that the beneficiary will act in a "managerial" or "executive" capacity. The petitioner has submitted in support of its petition a vague and non-specific job description which fails to sufficiently describe what the beneficiary will do on a day-to-day basis and, consequently, fails to establish that the beneficiary will "primarily" perform qualifying duties. For example, the petitioner states that the beneficiary in administering the petitioner's used car business will be "in charge of the whole operation;" plan, develop, and establish policies; set strategy and vision; lead the "management team;" set budgets; identify opportunities; assist in the implementation of "goals, objectives, policies, and procedures;" direct the formulation of "financial programs;" review contracts; and establish standards and controls. However, the petitioner fails to specifically describe these policies,

strategies, visions, opportunities, goals, objectives, procedures, and programs or explain what, exactly, the beneficiary will do in being "in charge of the whole operation" other than to act as a first-line supervisor of used car lot workers. The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated job duties does not establish that the beneficiary will actually perform managerial or executive duties. 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. *Id.* Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Consequently, the record is not persuasive in establishing that the beneficiary will primarily perform managerial or executive duties in his administration of the used car business. Not only are the ascribed duties so vaguely described that it cannot be discerned whether any is a bona fide managerial or executive duty, the petitioner failed to establish that the beneficiary will be relieved of the need to perform the non-qualifying administrative, operational, or first-line supervisory tasks inherent to his ascribed duties. While the petitioner claims to employ 3 subordinate employees and 3 independent contractors, the petitioner has failed to establish that these workers will relieve the beneficiary of the need to perform the non-qualifying tasks inherent to his ascribed duties, e.g., acting as a first-line supervisor of the sales and clerical staff. Accordingly, the record is not persuasive in establishing that the beneficiary will "primarily" perform qualifying duties. 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 International*, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization. As noted above, the petitioner claims that the petitioner will directly supervise a secretary, a business consultant, a general manager, and the "head of financial department." The "head of financial department" and the "general manager" are both, in turn, portrayed in the organizational chart as supervising subordinate workers. However, the petitioner fails to describe the "head of financial department" and the "general manager" as having substantial managerial or supervisory control over subordinate workers. To the contrary, the "head of financial department" and the "general manager" are described as performing the tasks necessary to the operation of the business. Therefore, it cannot be concluded that either of these claimed workers is a bona fide supervisory or managerial worker. In examining the supervisory or managerial capacity of workers, CIS will look first to the petitioner's description of the job duties. *See cf.* 8 C.F.R. § 204.5(j)(5). Arbitrarily placing an employee in a position superior to another worker on an organizational chart will not establish that this employee is a bona fide managerial or supervisory worker. Furthermore, it has not been established that the reasonable needs of the used car enterprise described in the record would require the services of a managerial or executive employee who is relieved of the need to perform first-line supervisory tasks by a subordinate tier of managers or supervisors. *See generally Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313, 1316 (9th Cir. 2006). Therefore, it appears that the beneficiary will be, at most, a first-line supervisor of non-professional used car workers. A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised

employees are professionals. § 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. Furthermore, as the petitioner failed to establish the skills or educational backgrounds required to perform the duties of the subordinate positions, the petitioner has not established that the beneficiary will manage professional employees.¹

The petitioner argues on appeal that the beneficiary will manage an essential function of the organization. However, the record does not support this position. 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. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary will manage an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, 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. *See* 8 C.F.R. §§ 204.5(j)(2) and (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 tasks related to the function.

In this matter, the petitioner has not provided evidence that the beneficiary will manage an essential function. As explained above, the petitioner's vague job description fails to document that the beneficiary's duties will be primarily managerial. Also, the record indicates that the beneficiary will more likely than not primarily perform non-qualifying administrative, operational, and first-line supervisory tasks in his administration of the used car business. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties will be managerial, nor can it deduce whether the beneficiary will primarily perform the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Accordingly, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.

Similarly, the petitioner has failed to establish that the beneficiary will act in an "executive" capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's

¹In evaluating whether the beneficiary will manage 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).

authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary will act primarily in an executive capacity. The beneficiary's job description is so vague that it cannot be discerned what, exactly, the beneficiary will do on a day-to-day basis. As explained above, it appears more likely than not that the beneficiary will primarily perform the tasks necessary to produce a product or to provide a service and will, at most, act as a first-line supervisor of non-professional used car workers. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that CIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d at 1316 (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991)); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, 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).²

Accordingly, the petitioner has failed to establish that the beneficiary will primarily perform managerial or executive duties, and the petition may not be approved for that reason.³

²The petitioner cites *Mars Jewelers, Inc. v. INS*, 702 F.Supp. 1570, 1573 (N.D. Ga. 1988), to stand for the proposition that the small size of a petitioner will not, by itself, undermine a finding that a beneficiary will act in a primarily managerial or executive capacity. First, the AAO notes that the petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Mars Jewelers, Inc.*, where the district court found in favor of the plaintiff. With respect to *Mars Jewelers*, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

³The petitioner cites the Foreign Affairs Manual (FAM) in the brief as authority. It must be noted that the FAM is not binding upon CIS. *See Avena v. INS*, 989 F. Supp. 1 (D.D.C. 1997); *Matter of Bosuego*, 17 I&N

Beyond the decision of the director, the petitioner failed to establish that it "is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas." 8 C.F.R. § 204.5(j)(3)(C).

A "subsidiary" is defined at 8 C.F.R. § 204.5(j)(2) 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.

Likewise, an "affiliate" is defined in pertinent part at 8 C.F.R. § 204.5(j)(2) as:

- (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[.]

The regulations 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 Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982); *see also Matter of Church Scientology International*, 19 I&N Dec. 593. In the context of this petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N at 595.

In this matter, the petitioner claims to be 100% owned and controlled by the foreign employer, a Venezuelan business organization. In support, the petitioner submits, *inter alia*, a copy of a stock certificate dated November 8, 2004 representing the issuance of 1,000 shares of stock to the foreign employer. However, the record also contains a copy of the petitioner's 2006 Form 1120-A, U.S. Corporation Short-Form Income Tax Return, which indicates that no single individual or entity owns more than 50% of the petitioner's stock. Accordingly, it appears from the Form 1120-A that the petitioner is not majority owned by anyone, including the foreign employer. It is also noted that the instructions to the Form 1120-A clearly prohibit its use for United States corporations having "foreign shareholders that directly or indirectly own 25% or more of its stock." I.R.S. Form 1120-A (Instructions) (2006). The petitioner failed to explain why it filed a Form 1120-

125 (BIA 1979). The FAM provides guidance to employees of the Department of State in carrying out their official duties, such as the adjudication of visa applications abroad. The FAM is not relevant to this proceeding.

A when the instructions to this form clearly prohibit its use by taxpayers who are principally owned by foreign individuals or entities. The petitioner also failed to explain why it averred in the Form 1120-A not to be majority owned by a single interest. 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). 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 petitioner has failed to establish that it "is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas," and the petition may not be approved for this additional reason.

The previous approval of L-1A petitions for this petitioner does not preclude CIS from denying a subsequently filed non-immigrant or immigrant petition based on a reassessment of the petitioner's qualifications. *See Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Despite any number of previously approved petitions, CIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act, 8 U.S.C. § 1361.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis). Therefore, based on the additional ground of ineligibility as discussed above, this petition cannot be approved.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown 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 at 1043, *aff'd*, 345 F.3d 683.

As a final note, CIS records indicate that the beneficiary has previously been approved for L-1 employment with the instant petitioner. However, with regard to the beneficiary's 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 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).

In addition, 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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.