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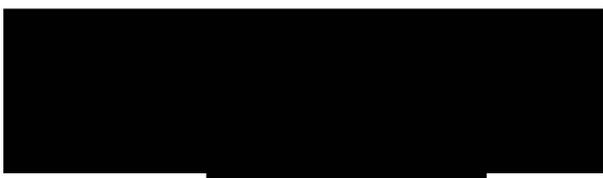
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

B4



FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: **APR 02 2009**  
LIN 07 052 53052

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]

**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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
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 is a Delaware corporation, which claims to be a developer and manufacturer of automatic control valves and to have a qualifying relationship with the beneficiary's previous employer in Israel. 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 a primarily managerial or executive capacity.

On appeal, counsel to the petitioner disputes the director's findings, asserts that the beneficiary will be employed in a primarily managerial capacity, and submits a brief in support of his 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 clearly state in the underlying petition whether the beneficiary will be employed in a managerial or executive capacity. While counsel on appeal argues that the beneficiary will be employed in a managerial capacity, the AAO will nevertheless consider both classifications. The AAO reviews appeals on a *de novo* basis. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petitioner describes the beneficiary's proposed duties in the United States in an undated letter attached to the petition as follows:

[The petitioner] now wishes to continue to employ [the beneficiary] in the position of Vice President of Sales and Marketing on a full time indefinite basis. [The beneficiary] represents [the petitioner] in all aspects of its business operations and has final discretionary authority over all operations with full final signatory responsibility. [The beneficiary] selects and manages vendors and suppliers and provides employment to subcontracted professional staff. Through third-party vendors [the beneficiary] manages all essential functions of the company which includes marketing and business development, accounting, logistics, technical support, installation of products and technical training and troubleshooting, accounting, finance, tax, and warehousing and shipping.

[The beneficiary] represents [the petitioner] in contacts with existing and potential customers to introduce new lines of products and new product features to the market. He integrates market research, product development information, and profit objectives into effective marketing plans aimed at reaching maximum market penetration of new [petitioner] products. [The beneficiary] manages the promotion of the new products, manages the development of business plans for products. [The beneficiary] coordinates the product development cycle with the company's design and product development team and provides customer-driven feedback to the design team to determine product features, functionality, and compatibility with other products. **He prepares pricing proposals.** [The beneficiary] develops and implements marketing & sales plans for a range of [petitioner] products to achieve sales

revenue and profit objectives. He develops and manages sales account development strategies to secure new business and to retain an existing customer base in a competitive market. [The beneficiary] develops market penetration strategies and conducts market research. He monitors control valve technology developed by competitors and conducts comparative analyses of [petitioner] products *vis-à-vis* competitor products.

The petitioner indicates in the Form I-129 that it employs one person, the beneficiary.

On November 2, 2007, the director requested additional evidence. The director requested, *inter alia*, a more detailed description of the beneficiary's proposed duties and the duties of any supervised employees, an organizational chart for the United States operation, and a description of any independent contractors engaged by the petitioner.

In response, counsel submitted a letter dated January 23, 2007, and corresponding flow charts, which further describe the beneficiary's proposed duties in the United States as well as the petitioner's engagement of independent contractors. Counsel asserts that the beneficiary is "the face" of the petitioner in the United States and that he serves as the "critical liaison" between the foreign employer, the petitioner, distributors, end-user customers, and technical support. The beneficiary allegedly "coordinates with the distributors the final sale of products, and coordinates technical support for the end-customer." Counsel explains that the petitioner has "elected not to have direct employees to provide sales, marketing, or technical support." Instead, the petitioner allegedly hires independent contractors. Counsel claims that the petitioner engages a company to provide technical support to end-customers, has hired an accountant to administer payroll, invoicing, and accounts payable, and uses a trucking company to ship and warehouse the products. It is noted that the petitioner does not identify any independent contractors performing sales or marketing tasks. Moreover, counsel further describes the beneficiary's duties as follows:

[The beneficiary] is the chief marketing and sales decision maker in the U.S. for [the petitioner's] products. While [the petitioner's] parent company in Israel designs and manufactures the products, [the beneficiary] is the [petitioner's] organizational marketing and sales presence in the U.S., and accordingly directs the company's focus on particular geographical areas or particular types of products. In these efforts, [the beneficiary] has wide discretionary authority, and is limited only by general direction of the parent company in Israel, which sets global goals and policies to which the company in Israel as well as its subsidiaries, agents, branches, and distributors across the world adhere.

[The petitioner] requires an individual who has the expertise and experience to make independent decisions about how to position the company, to determine what the market is like and set prices accordingly, to research what competitors are selling and what new products are entering the U.S. market. [The beneficiary] coordinates with the warehousing and shipping company to get products to customers or to distributors of [the petitioner's] products. In addition, he coordinates with the company's technical support vendor to provide technical support at client sites. Invoicing of clients, accounts receivable, accounts payable, payroll functions are delegated to an accounting firm which, in turn, also send invoices to

clients and distributors, and which handles payments to the warehousing vendor and the Technical Support vendor.

Counsel also submitted samples of correspondence between the beneficiary, distributors, and customers as evidence of the beneficiary's "sales and marketing function."

Finally, counsel claims that the beneficiary's duties are "adequately captured by the 'Summary Report' for the Occupational Title of 'Marketing Manager[.]" Counsel highlighted those marketing tasks "most immediately pertinent" to the beneficiary, e.g., developing pricing strategies, negotiating contracts, and selecting products to be displayed at trade shows. It is noted that counsel did not highlight as "pertinent" the component of the "marketing manager" report concerning the hiring, training, and evaluation of a marketing and sales staff. Accordingly, as the petitioner does not appear to employ any marketing or sales employees or contractors, it appears that the beneficiary will perform those duties listed in the report.

On April 9, 2008, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity.

On appeal, counsel to the petitioner asserts that the beneficiary will be employed primarily as a function manager.

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

In examining the executive or managerial capacity of the beneficiary, U.S. Citizenship and Immigration Services (USCIS) 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 primarily in a "managerial" or "executive" capacity. In support of the petition, the petitioner has submitted a vague job description which fails to establish that the ascribed duties will be executive or managerial in nature. For example, the petitioner asserts that the beneficiary will select and "manage" independent contractors who purportedly provide technical support to end-users, ship and warehouse products, and provide accounting and bookkeeping services to the petitioner. The petitioner also asserts that the beneficiary will represent the petitioner "in contacts with existing and potential customers to introduce new lines of products and new product features to the market" and that he will "manage" product promotions, product business plan development, and sales account development strategies. However, the petitioner fails to explain what, exactly, the beneficiary will do to "manage" these tasks as the record is devoid of evidence that the petitioner will employ a subordinate sales or marketing staff who will relieve the beneficiary of the need to perform the non-qualifying sales and marketing tasks inherent to these duties. The petition is also devoid of evidence establishing that the selection of independent contractors, the monitoring of their provision of services to the petitioner, or the representation of the petitioner in contacts with customers constitute qualifying managerial or executive duties. Specifics are clearly an important indication of whether a beneficiary's duties will be 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 qualifying duties as the "vice president of sales and marketing." To the contrary, it appears more likely than not that the beneficiary will primarily perform non-qualifying sales, marketing, and administrative tasks in the performance of his duties. The beneficiary is described as representing the petitioner in contacts with customers, introducing products, creating and implementing marketing and sales plans, promoting products, preparing pricing proposals, developing market penetration strategies, conducting market research, monitoring competitors' products, conducting comparative analyses of comparable products, negotiating contracts, and selecting products to be displayed at trade shows. However, absent evidence to the contrary, these do not appear to be qualifying managerial or executive duties. The correspondence submitted by the petitioner, which indicates that the beneficiary engages directly in sales and marketing negotiations with customers, indicates that the beneficiary performs these non-qualifying tasks rather than "manages" their performance.

Furthermore, the beneficiary is the only employed worker, and, as noted above, the record does not establish that the beneficiary will be relieved of the need to perform the non-qualifying tasks inherent to his ascribed sales, marketing, and administrative duties by a subordinate staff of employees or contractors. While the petitioner claims that the petitioner has engaged independent contractors to perform many of the technical support, warehousing, transportation, and bookkeeping tasks associated with the business, the record is devoid of evidence establishing that the petitioner has engaged employees or contractors to perform the other non-qualifying tasks which are apparently performed by the beneficiary, e.g., sales, marketing, and administration. Accordingly, it appears more likely than not that the beneficiary will primarily perform non-qualifying administrative or operational tasks in his administration of the enterprise as its sole employee. 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 asserted in the record, the beneficiary will not supervise any subordinate employees. Although the petitioner claims that the beneficiary will supervise independent contractors, these persons are not "employees" of the enterprise and it has not been established that the beneficiary will truly control these individuals. Once again, 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. Regardless, the supervision and control of independent contractors is not a qualifying duty as a matter of law. The Act is quite clear that only the management of *employees* may be considered a qualifying managerial duty for purposes of this visa classification. *See* section 101(a)(44)(A)(ii) of the Act.

Furthermore, the petitioner has failed to establish that the beneficiary will manage an essential function of the organization. The term "function manager" applies generally when a beneficiary will not supervise or control

the work of a subordinate staff but instead will be 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 will manage the function rather than perform the tasks related to the function.

In this matter, the petitioner has not provided evidence that the beneficiary will manage an essential function. The petitioner's vague job description fails to establish that the beneficiary's duties will be primarily managerial. Also, as explained above, the record does not establish that the beneficiary will more likely than not primarily perform qualifying tasks. To the contrary, it appears that the beneficiary will primarily perform non-qualifying sales, marketing, and vendor administration tasks. 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 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. As explained above, it has not been established that the beneficiary will be relieved from primarily performing non-qualifying sales, marketing, or administrative tasks such that he will be able to devote a majority of his time to primarily performing qualifying duties in his administration of the business as its sole employee. 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 USCIS "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 1313, 1316 (9<sup>th</sup> Cir. 2006) (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 USCIS 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).

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.

Beyond the decision of the director, the petitioner failed to establish that the beneficiary was employed abroad in a primarily managerial or executive capacity.

The foreign employer described the beneficiary's duties abroad as "director of marketing and sales for Europe" in an undated letter submitted in response to the director's Request for Evidence as follows:

Through his subordinate employees, [the beneficiary] directed all marketing and sales activities for [the foreign employer's] products that are sold in Europe. He managed revenues of US\$5,000,000 for product distribution in Western and Eastern Europe, and had overall responsibility for market penetration in the former Soviet Union, Eastern Europe, and Turkey. [The beneficiary] identified new business opportunities for the integration of hardware and software components with industrial equipment manufactured by the company in order to provide solutions to the European market. [The beneficiary] coordinated all marketing and sales activities between the end customer in Europe and the company's headquarters and performed market analysis, market segmentation and marketing strategy for the expansion of distribution channels and the positioning of [the foreign employer] within its industry in the region.

The foreign employer claims in the undated letter and an appended organizational chart that the beneficiary supervised six "professional individuals" in his performance of his duties abroad. These workers are described as performing tasks related to export, customer service, sales, and public relations.

However, upon review, the record is not persuasive in establishing that the beneficiary primarily performed managerial or executive duties abroad. In support of the petition, the petitioner submitted a vague and non-specific job description which fails to sufficiently describe what the beneficiary did on a day-to-day basis. Specifics are clearly an important indication of whether a beneficiary's duties were 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, *aff'd*, 905 F.2d 41. Accordingly, it appears that the beneficiary primarily performed non-qualifying duties and was, at most, the first-line supervisor of six non-professional workers performing the tasks necessary to the provision of a service or the production of a product. None of these subordinate "managers" is described as having supervisory or managerial responsibilities over other employees. 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. Finally, as the petitioner failed to establish the skills required to perform the duties of the

subordinate positions, the petitioner has not established that the beneficiary managed "professional" employees.<sup>1</sup>

Accordingly, as the petitioner failed to establish that the beneficiary was employed abroad in a primarily managerial or executive capacity, the petition may not be approved for this additional reason.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d at 1002 n. 9 (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, USCIS 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 USCIS 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.

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<sup>1</sup>In evaluating whether the beneficiary managed or 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).

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 USCIS 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 USCIS 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 USCIS 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 USCIS 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 USCIS will approve an immigrant petition filed on behalf of the same beneficiary. USCIS 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. at 597. It would be absurd to suggest that USCIS 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, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.