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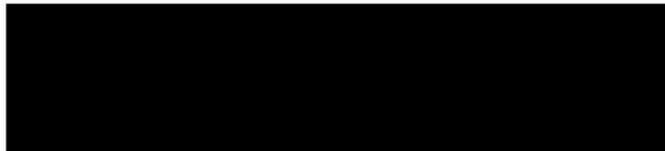
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IN RE:

Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed the instant immigrant 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, a Florida corporation, operates a beauty salon. It seeks to employ the beneficiary as its general manager.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner asserts that the beneficiary is engaged in only executive and managerial duties and is in charge of the overall management of the company. On appeal, the petitioner states that it previously submitted a poorly written statement of qualifications which led the director to conclude that the beneficiary would not be employed in a qualifying managerial or executive capacity. The petitioner submits an amended letter of support 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 sole issue addressed by the director is whether the petitioner established that 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), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The immigrant visa petition was filed on June 25, 2007. The petitioner indicated on Form I-140 that the beneficiary would be employed as general manager of the petitioning company, which claims to operate a beauty salon with three employees. The petitioner did not submit a letter in support of the petition or provide a description of the beneficiary's proposed duties as general manager.

Therefore, on February 21, 2008, the director issued a request for additional evidence in which he instructed the petitioner to submit, in part: (1) a detailed description of the beneficiary's proposed duties, identifying the actual, specific day-to-day tasks to be performed and an estimate of the percentage of time the beneficiary

will dedicate to each duty; (2) a detailed organizational chart for the U.S. company, including the names and detailed position descriptions for all employees subordinate to the beneficiary; and (3) copies of the petitioner's IRS Form 1120, U.S. Corporation Income Tax Return, Forms W-2, and Forms 1099 for 2007.

In response, the petitioner submitted the following description of the beneficiary's responsibilities as "owner/chief executive officer":

▪ Store Opening and Closing	15%
▪ Inventory – Purchasing and Acquisitions	10%
▪ Payroll	20%
▪ Scheduling	10%
▪ Marketing and Advertising	15%
▪ Accounts Payable	15%
▪ Accounts Receivable	15%

The petitioner submitted an organizational chart for the U.S. company which indicates that the beneficiary directly supervises the "supervisor/skin care," who in turn supervises three cosmetologists, two manicurists and three barbers. The petitioner stated that the supervisor's duties include customer satisfaction (55%), daily inventory (15%) and cashier duties (30%).

The petitioner also submitted evidence that the beneficiary completed a total of 286 hours of training at various technical schools in Venezuela and earned three qualifications as a "Barber" in 2002.

Finally, the petitioner provided a copy of its Form 1120, U.S. Corporation Income Tax Return for 2007, which shows that the petitioner paid no salaries and wages and no compensation to officers. The petitioner reported payments of \$28,900 for outside services, but it did not provide copies of IRS Forms 1099 as evidence of payments to independent contractors.

The director denied the petition on May 14, 2008, concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. The director observed that the evidence submitted indicates that the beneficiary will be involved in the day-to-day duties required for the operation of a small business and would not be supervising a subordinate staff of managers, supervisors or professionals. The director also emphasized that the petitioner failed to provide evidence of payments made to employees in 2007 in the form of Forms W-2 or Forms 1099. The director acknowledged the \$28,900 paid for outside services but noted that USCIS could not assume that such payments were made to workers.

On appeal, the petitioner asserts in a letter dated June 13, 2008 that it previously submitted a "poorly written statement of qualifications" which led to the denial of the petition. The petitioner provides a new list of job duties for the beneficiary as follows:

1. Responsible for the planning, organizing, delegating and controlling processes of the hair salon;
2. Responsible for the scheduling of employees and to insure that the hair salon operations operate as per the established standards;

3. In charge of the functions of hiring, training, monitoring and to maintain the highest level of quality and professionalism...
4. Responsible for establishing workflow and training schedules and for the personnel career path;
5. Responsible for inventory management, purchasing and auditing;
6. To prepare daily reports including sales reconciliation, bank deposits and sales trends;
7. To study and analyze the different operational, organizational, and fiscal aspects of the operation. . .
8. To establish and manage the hair salon budget along with the input from lower management;
9. Responsible for the recruiting, retention and releasing of full potential of every hair stylist;
10. To manage all matters [sic] related to the function of translation including quotes, contract negotiations, resources, assignment and proofreading;
11. Assist supervisors in the hiring and training personnel;
12. Answer phone referrals, follow up and compile and analyzes data regarding potential clients and/or vendors;
13. Ensure activities meet with and integrate with the hair salon's requirements for quality management, health and safety, legal stipulations, environmental policies, and general duty of care;
14. [The beneficiary] shall dedicate approximately 100% of his time performing these functions; and
15. [The beneficiary] shall develop the overall financial plans and accounting practices of [the petitioner].

The petitioner also submits copies of its Forms 1099, Miscellaneous Income, for 2007, showing payments to a total of five employees identified on the organizational chart, including two barbers and three cosmetologists. The record does not contain evidence of payments to the supervisor, the third barber or the two manicurists also identified on the organizational chart. In 2007, the barbers received payments of \$4,700 and \$5,200, and the cosmetologists received payments ranging from \$4,800 to \$9,200.

Upon review of the petition and the evidence, the petitioner has not established that the beneficiary will be employed 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). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* In addition, the definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary primarily performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9<sup>th</sup> Cir. July 30, 1991). While the AAO does not doubt that the beneficiary exercises discretion over the petitioner's business as its president, owner, and highest-level employee, the totality of the evidence submitted does not demonstrate that the beneficiary's actual duties will be primarily managerial or executive in nature. It is not sufficient for the petitioner to establish that the beneficiary performs *some* managerial or executive duties.

The petitioner's description of the beneficiary's duties submitted in response to the RFE indicated that the beneficiary primarily performs non-qualifying operational tasks. Duties such as opening and closing the salon, purchasing inventory, handling accounts payable/receivable, preparing payroll, preparing employee schedules, and marketing and advertising the business, do not rise to the level of managerial or executive capacity. According to the petitioner's description, the beneficiary is essentially responsible for nearly all administrative and operational functions in the company other than personally providing services to customers. An employee who "primarily" performs such tasks 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).

On appeal, the petitioner has provided a new list of 15 job duties, but fails to explain why it previously indicated that the five duties referenced above require 100% of the beneficiary's time. While the AAO acknowledges the petitioner's claim that its previous description was "poorly written," it is clear that the petitioner is not merely seeking to clarify the job description submitted in response to the RFE. The beneficiary's previously stated responsibilities for opening and closing the salon, performing marketing and advertising duties, preparing payroll, and handling accounts payable and receivable are conspicuously absent from the new position description submitted on appeal, although the petitioner initially indicating that such duties require 80 percent of the beneficiary's time. On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Under the circumstances, the AAO will not give any evidentiary weight to the position description submitted on appeal.

When examining the managerial or executive capacity of a beneficiary, USCIS reviews the totality of the record, including descriptions of a beneficiary's duties and his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business.

Here the petitioner indicated at the time of filing that it employed only three employees. In response to the director's request for evidence, the petitioner claimed to employ a total of ten workers, including the beneficiary, a supervisor, three cosmetologists, two manicurists and three barbers. The petitioner has not provided any evidence of payments to the supervisor, the manicurists, and one of the barbers during 2007. 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).

Four of the five employees who were paid received only approximately \$5,000 during 2007, which suggests that the employees either worked part-time and/or worked for only part of the year. Based on the evidence of record, it appears that the beneficiary may have supervised as few as two or three or as many as five barbers and cosmetologists at the time the petition was filed.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act. The petitioner has not submitted documentation to corroborate its claim that it employs the subordinate supervisor, nor has it established that the beneficiary supervises professional personnel.<sup>1</sup>

While the petitioner has not argued that the beneficiary will manage an essential function of the organization, the record nevertheless would not support this position even if taken. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed 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. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function. The petitioner's vague job description fails to document that the beneficiary's duties will be primarily managerial, and in fact the record shows that the beneficiary will be performing many of the day-to-day operational and administrative tasks of the business, rather than performing primarily managerial or executive duties.

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). **Instead, an executive's duties must be the critical factor.** However, if USCIS fails to believe the facts stated in the petition are true, then that assertion may be rejected. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Furthermore, 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

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<sup>1</sup> In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

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)). In addition 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).

At the time of filing, the petitioner was a four-year-old company engaged in operating a hair styling salon. It claimed to employ only three workers at the time of filing, but the evidence on record does not establish which three people were employed. The petitioner indicates that the beneficiary himself performs the administrative, financial, purchasing, marketing and advertising functions for the business. The record also shows that the beneficiary is a qualified barber/hairstylist, and that the petitioner paid less than \$10,000 in total to its two barbers in 2007. Since the petitioner clearly did not employ full-time barbers or even the equivalent of one full-time barber, it is reasonable to conclude that the petitioner would have a reasonable need for the beneficiary himself to provide hairstyling services at times.

The reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). The reasonable needs of the petitioner may justify a beneficiary who allocates 51 percent of his duties to managerial or executive tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties. A review of the totality of the record fails to establish that the petitioner has a reasonable need for the beneficiary to perform primarily managerial or executive duties at its current stage of development.

The fact that the beneficiary manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739 (Feb. 26, 1987). Pursuant to the strict statutory definitions, section 101(a)(15)(L) of the Act does not include any and every type of “manager” or “executive,” such as staff officers or specialists, self-employed persons who perform the management activities involved in practicing a profession or trade, or a first-line supervisor of non-professional employees. *See* section 101(a)(44)(A)(iv) of the Act; *see also* 52 Fed. Reg. 5738, 5740 (February 26, 1987)(available at 1987 WL 127799).

Based on the foregoing discussion, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the AAO finds that the petitioner has not established its ability to pay the beneficiary's proffered annual salary of \$18,000. The regulation at 8 C.F.R § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence

that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

Federal regulations affirmatively require an alien to establish eligibility for an immigrant visa at the time an application for adjustment of status is filed or when the visa is issued by a United States consulate. 8 C.F.R. § 245.1(a), 22 C.F.R. § 42.41. The petitioner bears the ultimate burden of establishing eligibility for the benefit sought, and that burden is not discharged until the immigrant visa is issued. *Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984).

In determining the petitioner's ability to pay the proffered wage, USCIS will first examine whether the petitioner employed the beneficiary at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, this evidence will be considered *prima facie* proof of the petitioner's ability to pay the beneficiary's salary. According to the evidence of record, the beneficiary received no salary or wages from the petitioner in 2007 and therefore was not employed at a salary equal to or greater than the proffered wage at the time the petition was filed in June 2007.

As an alternate means of determining the petitioner's ability to pay, the AAO will next examine the petitioner's net income figure as reflected on the federal income tax return, without consideration of depreciation or other expenses. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); see also *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

In *K.C.P. Food Co., Inc. v. Sava*, the court held the Immigration and Naturalization Service (now USCIS) had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than on the petitioner's gross income. 623 F. Supp. at 1084. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income. Finally, there is no precedent that would allow the petitioner to "add back to net cash the depreciation expense charged for the year." *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. at 537; see also *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. at 1054. According to the petitioner's 2007 Form 1120, the petitioner's net income in 2007 was \$2,130. Therefore, the petitioner did not have sufficient net income to pay the beneficiary his proffered salary.

Finally, if the petitioner does not have sufficient net income to pay the proffered salary, the AAO will review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities. Net current assets identify the amount of "liquidity" that the petitioner has as of the date of filing and is the amount of cash or cash equivalents that would be available to pay the proffered wage during the year covered by the tax return. As long as the AAO is satisfied that the petitioner's current assets

are sufficiently "liquid" or convertible to cash or cash equivalents, then the petitioner's net current assets may be considered in assessing the prospective employer's ability to pay the proffered wage.

Here, the petitioner did not report any assets on its 2007 federal income tax return. Based on the foregoing discussion, the petitioner has not established its ability to pay the proffered wage. For this additional reason, the petition cannot be approved.

Another issue not addressed by the director is whether the petitioner established that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity for at least one year in the three years preceding the beneficiary's entry to the United States as a nonimmigrant, as required by 8 C.F.R. 204.5(j)(3)(i)(B).

The petitioner did not provide any information regarding the beneficiary's last position with the foreign entity at the time the petition was filed. Accordingly, in the RFE issued on February 21, the director instructed the petitioner to submit: (1) a detailed description of the beneficiary's duties with the foreign entity, identifying the actual, specific day-to-day tasks he performed and an estimate of the percentage of time the beneficiary dedicated to each duty; and (2) a detailed organizational chart for the foreign company, including the names and detailed position descriptions for all employees who were subordinate to the beneficiary.

The petitioner submitted an organizational chart for the foreign entity which identified the beneficiary as president, his spouse as vice president, an accountant and two salespeople. The petitioner did not submit the requested position description in response to the RFE. Any failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The petitioner's letter on appeal references the "beneficiary's qualifications and position abroad," but then goes on to discuss the beneficiary's duties in relation to the U.S. company. Therefore, the record remains devoid of any information regarding the beneficiary's duties with the foreign entity or the nature of the foreign entity's business. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Accordingly, the petitioner has not established that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity. For this additional reason, the petition cannot be approved.

Another issue not addressed by the director is whether the foreign entity continues to do business abroad. A multinational executive or manager is one who "seeks to enter the United States in order to *continue* to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive." Section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C). "Multinational" means that the qualifying entity, or its affiliate or subsidiary, conducts business in two or more countries, one of which is the United States. 8 C.F.R. § 204.5(j)(2).

Therefore, the petitioner must establish that the foreign entity that employed the beneficiary during the three-year period preceding his assignment to the United States continues to exist, do business, and have a qualifying relationship with the petitioner.

The petitioner claims to be an affiliate of [REDACTED], located in Venezuela. The petitioner has submitted sufficient evidence to establish that the U.S. and foreign entities have an affiliate relationship based on common majority ownership by the beneficiary.

As evidence that the foreign entity continues to do business, the petitioner initially submitted a copy of the foreign entity's Venezuelan tax return, which appears to have been filed in June 2005. The return was not accompanied by an English translation. The petitioner also submitted three un-dated reference letters from businesses in Venezuela claiming that the foreign entity has rendered "services of radial and written advertising" for a number of years. In the request for evidence, the director requested additional evidence to establish that the foreign entity is doing business, such as credible translations of the most recent tax return, annual report, balance sheets, or a current audited financial statement.

In response, the petitioner submitted photographs, purportedly of the foreign entity, which have clearly been altered. One photograph depicts a storefront and the foreign entity's name has been placed on a window. However, it is evident that the company name was added to the photograph digitally using software such as Photoshop. The petitioner has added the company name to a photograph of the interior of the premises using the same technique. The door to the business establishment pictured clearly depicts a Florida telephone number. There is ample reason to conclude that the photographs do not represent the Venezuelan company's business premises. 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 remaining evidence submitted includes general balance sheets for the foreign entity for the years 2004, 2005 and 2007. The balance sheets are accompanied by a statement from a public accountant who indicates: "I have not audited nor reviewed the financial statements of the [foreign entity]" and states that the documents were prepared "without the application of procedure or verification nor of evaluation." As noted above, the director specifically requested audited financial statements. The petitioner also submitted a copy of the foreign entity's tax return for 2007 which shows gross income in the amount of Bs. -181,135. The petitioner provided only a summary translation of the document. Finally, the petitioner submitted copies of seven invoices issued by the foreign entity between January 2007 and January 2008. According to the invoices, these seven orders were canceled. In light of the altered photographs submitted, the AAO does not find the un-audited financial statements, un-translated tax return and canceled orders to be sufficient to establish that the foreign entity is engaged in the regular, systematic and continuous provision of goods and/or services. The petitioner has not established that the beneficiary's former employer continues to do business. For this additional reason, the petition cannot be approved.

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).

The AAO acknowledges that the petitioner has twice successfully filed L-1A nonimmigrant intracompany transferee petitions on behalf of the instant beneficiary. The AAO has consistently determined that prior nonimmigrant approvals do not preclude CIS from denying an extension or a separate immigrant petition.

*See e.g. Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The AAO acknowledges that both the immigrant and nonimmigrant visa classifications rely on the same definitions of managerial and executive capacity and on similar definitions of qualifying relationship/organization. *See* §§ 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44) and 8 C.F.R. § 204.5(j)(2) and 8 C.F.R. § 214.2(l)(1)(ii). Although the statutory definitions for managerial and executive capacity are the same and the definitions of qualifying relationship/organization are similar, the question of overall eligibility requires a comprehensive review of all of the provisions, not just these definitions. 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 general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by USCIS than nonimmigrant petitions. Accordingly, many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant Form I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989).

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 approval of a nonimmigrant petition does not guarantee that USCIS will approve an immigrant petition filed on behalf of the same beneficiary. 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). Despite any number of previously approved petitions, USCIS 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.

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Based on the lack of required evidence of eligibility in the current record, the AAO finds that the director was justified in departing from the prior nonimmigrant petition approvals by denying the instant petition.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he or she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.