

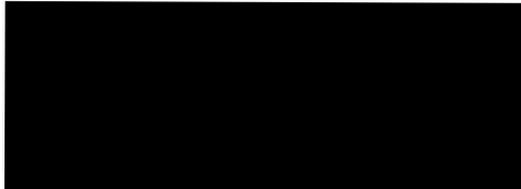
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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services



B4

FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: APR 27 2009
LIN 07 212 51483

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.

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 janitorial and landscaping services company. 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, the petitioner asserts that the beneficiary is engaged in primarily executive and managerial duties and is in charge of the overall management of the company. The petitioner emphasizes that U.S. Citizenship and Immigration Services (USCIS) has approved the petitioner's request to classify the beneficiary as an L-1A nonimmigrant in a managerial or executive capacity on two occasions, and notes its concern with "the disparity in the interpretation of the law."

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 stated on Form I-140 that it employed five persons as of the date of filing. In a letter dated June 6, 2007, the petitioner described the beneficiary's duties as follows:

[The beneficiary] has been responsible for maximizing revenues, accounts, credits, loans, and service through managerial policies that she has established. [The beneficiary] also has full

control over our corporate finances. She negotiates terms of service contracts and represents the company at these negotiations or any other matter both legally or commercially.

The beneficiary has full authority over personnel matter [sic], such as hiring, evaluating performance level, as well as determining salaries, bonuses, promotions, reassignments or outright dismissals.

* * *

[The beneficiary's] duties as described are not only managerial in nature she also supervises a staff which includes one manager who is also a professional. The staff of our U.S. corporation includes the Operations Manager, Francisco Molina who holds a bachelor's degree in civil engineering and has over ten years of work experience in the business management trade.

The petitioner also submitted the following position description for the proffered position of general manager:

Overall Assignments

Develops and implements business policies to maximize revenues, accounts, credits, loans and services.

Building the financial and operational models required for the company to succeed.

- Expanding the founding team to position the company for growth.
- Negotiates contracts with commodity suppliers

Program Development and Strategic Planning

Prepares and establishes the strategic business and marketing direction of [the petitioner].

Provides leadership to implement the strategic direction and achieve the organization's sales goals.

- Evaluates and improves existing accounts in terms of cost and efficiency and develops new planning strategies
- Identifies and accesses resources to improve overall commercial activities effectiveness.

Operations

- Manages operations of [the petitioner].
 - Plans business objectives, develops organizational policies to coordinate functions between employees and to establish responsibilities and procedures for attaining objectives and revises goals and plans in accordance with current conditions.
 - Exercises complete authority over personnel, including evaluation of performance, hiring and dismissals.
- Reports directly to board of directors.

Financial Oversight and Management

- Directs financial activities and establishes short and long-term financial goals.

Prepares and manages annual budgets. Has full responsibility for the company's profit and loss statements.

- Tracks and monitors expenditures on an ongoing basis.

The petitioner submitted an organizational chart showing that the beneficiary supervises the operations manager, who in turn, supervises three janitorial workers. The chart also depicts an accountant whose services are provided on a contract basis. The petitioner provided the following job description for the operations manager:

- Oversees compliance of business strategies, customer service and issues as per instructions by general manager.
- Orders supplies and prepares weekly labor schedules.
- Manages accounts receivable and payable and issues invoices.
- Allocates labor resources to meet contract deadlines
- Manages and maintains records such as receipts, invoices, work time logs
- Prepares income and expense reports but [sic] budget review purposes
- Meets with clients to address concerns or complaints
- Reviews premises of clients where janitorial work is done.

Finally, the petitioner submitted copies of its Florida Forms UCT-6, Employer's Quarterly Report, for 2006. During the fourth quarter of 2006, the petitioner paid the beneficiary wages of \$12,500, paid \$3,600 to one of the janitorial workers, paid \$1,725 to the general manager, and paid \$1,725 to another janitorial worker. There is a fifth person, [REDACTED] listed on the fourth quarter Form UCT-6, but this person does not appear on the petitioner's organizational chart. The petitioner's organizational chart indicates that [REDACTED] is the third janitorial worker. According to the Forms UCT-6, [REDACTED] was employed during the first and third quarters of 2006, earning total wages of \$1,650 during 2006. The petitioner did not submit any payroll records or quarterly reports for 2007.

The director issued a request for additional evidence on December 31, 2007. The director acknowledged the position description submitted for the beneficiary's position and requested that the petitioner indicate the approximate percentage of time the beneficiary is expected to devote to each of the duties mentioned. The director also requested copies of the petitioner's Forms W-2 issued for the 2006 tax year.

In a response dated March 14, 2008, the petitioner stated that the beneficiary devotes 40% of her time to "development and application of managerial policies to maximize revenue, accounts, credits, loans and services." The petitioner described the duties associated with this responsibility as:

- Prepares business plan establishing strategies in areas of sales, marketing, financial planning and personnel management.
- Makes any amendments to such strategies according to changes in market demand
- Sets monthly revenue/sales objectives that will be managed by the Operations Manager
- Prepares and manages budget
- Manages corporate accounts including lines of credit
- Allocates funding to meet marketing and operational expenses

- Reviews and determines advertising mediums
- Implements labor policies for employees (quality of service expected, punctuality, behavioral issues, vacations, salary)
- Determine investment opportunities in other markets. For example, the company established an affiliate company in the city of Jacksonville, Florida. . . . The company also bought a franchise in the national chain, Coverall Cleaning Concepts.
-

The petitioner indicated that the beneficiary devotes an additional 30% of her time to negotiating terms of service contracts and representing the company at negotiations. The petitioner described the beneficiary's specific duties in this regard as:

- Reviews job orders from private and governmental entities. Determines its cost in labor and supplies; also takes into consideration any time deadlines. Makes a bid for such job orders. If approved, parties sign contract.
- Meets and negotiates with corporate clients to discuss pricing and terms of service
- Meets with bank representatives to negotiate lines of credit (presents company's assets, history of accounts, gross income)
- Compliance of terms of service (labor) contracts are under the supervision of the Operations Manager

Finally, the petitioner indicated that the beneficiary devotes the remaining 30% of her time to personnel matters, as follows:

- Reviews bi-weekly job performance charts for each janitorial and landscape employee. Chart is completed by Operations Manager who is the one in charge of evaluating job performance.
- Reviews periodic job performance survey completed by each client. . . .
- Approves new hiring if needed, upon recommendation of Operations Manager.
- Determines and approves bonuses if employee surpasses expected job performance. . . .
- Determines dismissal if employee is not meeting job performance requirements or other issues.

The petitioner submitted copies of its 2006 Forms W-2, which indicate that the beneficiary earned \$35,400; the operations manager earned \$5,750; a janitorial employee, earned \$11,400; [REDACTED] earned \$1,650; [REDACTED], also a janitorial employee, earned \$3,450; and [REDACTED] earned \$1,725.

As evidence of its new affiliate location in Jacksonville, Florida, the petitioner submitted a receipt for a business tax payment made on August 22, 2007 for a new business, for license year 2007.

Upon review of the petitioner's response, the director denied the petition on May 1, 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. In denying the petition, the director found that while some of the beneficiary's duties appear to be managerial in nature, other duties are more akin to those of an accountant, a market analyst or a sales representative and cannot be considered qualifying duties. The director also

determined that the evidence submitted was insufficient to establish that the beneficiary would supervise subordinate professional staff. The director noted that the operations manager's remuneration is low for "a salaried professional."

On appeal, the petitioner asserts that the director applied a very restrictive interpretation of the definition of managerial capacity. The petitioner contends that the director inappropriately determined that the operations manager supervised by the beneficiary is not a professional employee, noting that the employee's salary is irrelevant so long as the petitioner establishes that his duties are complex enough to be considered professional in nature. The petitioner reiterates the beneficiary's duties and contends that the beneficiary's duties meet the definitions of both executive capacity and managerial capacity. Finally, the petitioner emphasizes that USCIS twice approved the petitioner's request to classify the beneficiary as an L-1A nonimmigrant transferee in a managerial or executive capacity, noting its concern with "the disparity in the interpretation of the law."

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 (9th Cir. July 30, 1991).

The petitioner's initial description of the beneficiary's duties, while lengthy, offered little insight into what she will do on a day-to-day basis. The initial description of the beneficiary's duties was comprised of vague, repetitive, and broadly-defined responsibilities that failed to convey what managerial or executive tasks the beneficiary performs on a daily basis. For example, the petitioner indicated that the beneficiary "develops and implements business policies," builds "financial and operational models," "prepares and establishes the strategic business direction," of the company, "provides leadership to implement the strategic direction," "manages operations," "plans business objectives," "develops organizational policies," and "reports directly to the board of directors." These duties, which comprise more than half of the initial position description, loosely paraphrase the statutory definitions of managerial and executive capacity and do not indicate what specific tasks the beneficiary performs daily as the manager of small janitorial services company. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Other duties included in the petitioner's initial position description, such as "evaluates and improves existing accounts," and "identifies and accesses resources to improve overall commercial activities effectiveness" were similarly nonspecific.

In response to the director's request for details regarding how the beneficiary's time is allocated among specific duties, the petitioner submitted a different and lengthier list of duties. However, the expanded description is insufficient to establish that the beneficiary's primary duties are managerial or executive in nature. The petitioner indicated that the beneficiary devotes 30 percent of her time to personnel matters. Such duties include approving hiring, determining if bonuses are appropriate, firing employees as required, and reviewing bi-weekly job performance charts. In light of the totality of the evidence submitted, it is unclear why the beneficiary would need to devote such a large portion of her time to the listed tasks. There is no evidence that the petitioner has hired or fired employees in the recent past or subsequent to the filing of the petition, and no evidence of recruitment efforts. Review of a bi-weekly performance chart for three employees would not credibly require 30 percent of the beneficiary's time. While the AAO does not doubt that the beneficiary has authority over the company's personnel matters, it is reasonable to question the petitioner's claims regarding the amount of time the beneficiary devotes to this and other duties after reviewing the totality of the evidence.

The petitioner indicated that the beneficiary devotes an additional 30 percent of her time to negotiating the terms of service contracts and serving as the company's representatives for other matters. The beneficiary's stated responsibilities include reviewing job orders, determining costs of providing services, making bids, and negotiating with corporate clients. Based on these duties, it is evident that the beneficiary herself is responsible for selling the petitioner's services, as the petitioner has not indicated that the operations manager or the janitorial staff performs any sales or marketing duties. If the beneficiary is solely responsible for the company's sales and marketing efforts, it is reasonable to question whether such duties require only 30 percent of her time.

Finally, the petitioner indicates that the beneficiary devotes the remaining 40% of her time to establishing and amending sales, marketing and personnel strategies, performing financial tasks such as preparing budgets and allocating funds, advertising, managing corporate accounts, setting monthly objectives, implementing labor policies, and determining investment opportunities. Many of these duties, particularly those attributed to investment opportunities, are poorly explained. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Based on the foregoing discussion, the AAO concurs with the director's determination that the position descriptions submitted are insufficient to establish that the beneficiary will perform primarily managerial or executive duties.

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. If a beneficiary directly supervises other employees, the beneficiary must also

have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions.

Here, the petitioner has established that the beneficiary supervises one subordinate supervisor, the operations manager, and that she has the authority to hire and fire employees. However, the petitioner has not established that her duties are primarily those of a personnel manager. The beneficiary's sole direct subordinate, the operations manager, earned a salary of \$5,750 in 2006. Assuming that the petitioner pays him at least minimum wage (\$6.40/hour in Florida in 2006), he must have worked on a part-time basis, fewer than 20 hours per week. The fact that the beneficiary supervises one part-time subordinate supervisor does not establish that she qualifies as a personnel manager. Furthermore, the fact that the supervisor is employed on only a part-time basis raises questions as to whether the beneficiary herself is required to perform duties such as inspecting the work of the janitorial staff or handling customer service tasks when the operations manager is not on duty.

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. § 204.5(j)(5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. Here, the petitioner refers to the term "function manager" on appeal, but fails to articulate a claim that the beneficiary in this matter manages an essential function of the petitioning organization by identifying the function or the amount of time the beneficiary devotes to managing the function. The petitioner's unsupported assertions are not persuasive. 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)).

The AAO notes that 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, 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). The size of a company may be especially relevant when USCIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

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 (9th 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).

The petitioner in this matter claims to operate a janitorial and landscaping services company with five employees. Only the beneficiary and one janitorial employee appear to be employed on a full-time basis. One janitorial employee received only \$1,650 in 2006 and was not listed on the most recent quarterly report provided by the petitioner, while the other janitorial employee received wages of \$3,450 in 2006. As discussed above, the operations manager also receives wages commensurate with part-time employment. The lack of full-time staff to actually provide the services of the organization casts doubts on the stated job duties of the beneficiary and her immediate subordinate, as it is not evident that the business would have a reasonable need for two "managers" to oversee the services provided by one janitor and one or two part-time janitors. The petitioner also has a reasonable need for employees to perform financial, administrative, sales and marketing functions. As discussed above, the beneficiary herself, according to the job descriptions provided, is responsible for non-qualifying duties such as sales and promotion. While many of the financial, administrative and first-line supervisory duties are attributed to the beneficiary's direct subordinate, his part-time status raises questions regarding his ability to completely relieve the beneficiary from performing these non-qualifying duties.

In addition, the petitioner indicated that it opened a branch or affiliate office shortly after the filing of the petition, although it has submitted minimal evidence in support of this claim. If the petitioner has in fact opened a second office, this would reasonably impact the beneficiary's job duties and the petitioner's need for personnel. The petitioner has not claimed that it has hired additional employees to operate the second branch.

Here, the lack of a subordinate staff to provided the services of the U.S. company brings into question how much of the beneficiary's time can actually be devoted to the claimed managerial or executive duties. 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). The absence of a subordinate staff sufficient to perform the non-qualifying duties of the petitioner's business is a proper consideration in the analysis of the beneficiary's employment capacity. See *Q Data Consulting, Inc. v. INS*. 293 F. Supp. 25, 29 (D.D.C. 2003) (holding that the INS' finding that the beneficiary did not work in a primarily managerial or executive capacity was "bolstered by the absence of evidence that a sufficient 'subordinate staff' will 'relieve her from performing non-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 Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988). Furthermore, 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.

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

The AAO does not dispute that small companies require leaders or individuals who plan, formulate, direct, manage, oversee and coordinate activities; however the petitioner must establish with specificity that the beneficiary's duties comprise primarily managerial or executive responsibilities and not routine operational or administrative tasks. The fact that the beneficiary manages a business, regardless of its size, 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)(noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive"). Here, the record fails to establish that the majority of the beneficiary's duties will be primarily directing the management of the organization or a component or function of the organization. Accordingly the appeal will be dismissed.

Beyond the decision of the director, the AAO finds that, based on the record as presently constituted, the petitioner has not established that it has a qualifying relationship with the beneficiary's last foreign employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. a U.S. entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." *See generally* § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C); *see also* 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary"). The regulation at 8 C.F.R. 204.5(j)(3)(i)(C) requires the petitioner to submit evidence that 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.

The petitioner claims to be a wholly-owned subsidiary of [REDACTED] a Colombian company. The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

The petitioner has not submitted any documentary evidence of its ownership and control, such as copies of its stock certificates and stock transfer ledger. Furthermore, the petitioner's 2005 IRS Form 1120 indicates at Schedule K that no foreign entity owns 25 percent or more of its stock. 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). For this additional reason, the petition cannot be approved.

Finally, the AAO notes that the record as presently constituted contains no information regarding the beneficiary's employment with the foreign entity prior to her transfer to the United States, and therefore does not establish that she was employed in a primarily managerial or executive capacity for at least one year in the three years preceding her entry to the United States as a nonimmigrant. *See* 8 C.F.R. 204.5(j)(3)(i)(B). 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)). 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 last issue in this matter regards the previous approval of an L-1A nonimmigrant intracompany transferee petition filed on behalf of the beneficiary, and an extension of her L-1A status. The AAO has consistently determined that prior nonimmigrant approvals do not preclude USCIS 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 CIS 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). Because CIS spends less time reviewing Form I-129 nonimmigrant petitions than Form I-140 immigrant petitions, some nonimmigrant L-1A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also* 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).

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. As the evidence submitted with this petition does not establish eligibility for the benefit sought, the director was justified in departing from the previous nonimmigrant approvals by denying approval of the immigrant petition.

In addition, if the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Further, 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). The petitioner has not provided evidence or argument for the record that is sufficient to overcome the director's decision.

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.