



**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 AAO will dismiss the appeal.

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, an Illinois corporation, operates as a travel services company. The petitioner seeks to employ the beneficiary as its president.

The director denied the petition on April 4, 2007. The director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity for the United States company.

On appeal, counsel for the petitioner asserts that the beneficiary will be employed in a managerial or executive capacity, and the director's analysis was flawed due to a failure to understand the nature of the petitioner's business and the reasonable needs of the organization. Counsel emphasizes that the petitioner's business is Internet-based, with an overseas call center, and thus it does not require a large staff in the United States. Counsel further asserts that the director mischaracterized certain duties performed by the beneficiary as non-qualifying when they do, in fact, require the services of an executive. Counsel submits a brief and additional 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 and 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 that 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. *See* 8 C.F.R. § 204.5(j)(5).

The issue in this matter is whether the petitioner established that the beneficiary would be employed in a managerial or executive capacity with the United States entity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily-

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

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily-

- (i) Directs the management of the organization or a major component or function of the organization;
- (ii) Establishes the goals and policies of the organization, component, or function;
- (iii) Exercises wide latitude in discretionary decision-making; and

- (iv) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner filed the nonimmigrant visa petition on May 5, 2006. In a letter dated March 31, 2006, the petitioner indicated that it is the beneficiary's responsibility "to determine and refine the company's business development strategy." The petitioner further explained as follows:

The nature of the travel services industry requires the constant maintenance and expansion of industry networks and relationships, especially with corporate clients – namely travel agencies throughout North America who have as clients those wishing to travel to Russia for tourism, business, or other reasons. [The beneficiary] has acted as the official representative of the company, expanding the company's partner base, and ensuring that the clients are well-served by our staff.

The petitioner described the beneficiary's achievements during his time in the United States in L-1A status since 2004, but did not describe his specific job duties. The petitioner indicated that the beneficiary's accomplishments included the following: overseeing the expansion of the petitioner's operations to include a Chicago, Illinois office serving corporate and walk-in clients; overseeing the addition of new service offerings, including Russian passport and event management services; establishing relationships with third-parties for hotel bookings and airline ticket sales; and developing and implementing a new IT system for the company's orders, customer service and financial reporting.

The petitioner stated that its staff includes a vice president, two customer service managers, a financial director, and a contracted information technology analyst, and provided brief position descriptions for each employee. The petitioner indicated that two additional customer service managers would be hired during 2006. The petitioner also stated that it works in tandem with the affiliated IntelService Group of companies in Russia. The petitioner indicated that the Russian companies have more than 40 employees and more than a dozen contractors.

The director issued a request for additional evidence on November 13, 2006. The director observed that the petitioner had provided little specific information regarding the beneficiary's proposed duties in the United States, and therefore requested a detailed, comprehensive description of the position. The director instructed the petitioner to clearly define the specific duties of the position and to delineate the proportion of time devoted to such duties. The director also requested that the petitioner clearly discuss any subordinate employees supervised by the beneficiary, including their job titles, job duties, minimum position requirements, actual qualifications held, and a sample weekly work schedule.

In a response dated December 24, 2006, the petitioner provided a more detailed description of the beneficiary's duties, as follows:

- A. Management and Supervision – 25% of weekly hours
  - 1. hiring a staff of professionals and operational support

2. overseeing the Vice President and indirectly the managerial staff and independent consultants. . . .
  3. establishing corporate policies, imbue managerial staff with corporate "philosophy"
  4. working closely with the Vice President and the department heads on promotional, financial, IT projects
  5. setting sales volume and profitability objectives
  6. supervising Prominic, Inc., a company that provides servers that host all of the [petitioner's] web sites to make sure that web hosting is uninterrupted and sufficient to handle customer traffic. . . .
  7. managing the outside IT consultant in order to maintain corporate online orders interface, web sites and internal network and servers
  8. preparing move to a larger office in the spring of 2007.
- B. Financial and Accounting - 10% of weekly hours
1. acting in concert with Vice President and Financial Director, preparation of quarterly and yearly budgets and projections for the US office, follow up on accounts payable and receivable.
  2. supervising timely tax payments and reports including quarterly and yearly Federal and State of Illinois reports.
  3. acting in concert with the Vice President and Financial Director, review expenses and cut costs
  4. acting in concert with the Vice President, determine and adjust pricing strategy
- C. Business Development – 55% of weekly hours
1. overseeing the development of the company's websites. . . .
  2. formulating and directing the implementation of a corporate and retail strategy for attracting and retaining new visa and travel clients;
  3. directing the Vice President in substantially increasing the number of corporate partners and diversifying the corporate partner base
  4. instructing the Vice President to devise incentive and bonus programs for VIP partners
  5. maintaining competitive advantage – using data compiled by company on US-based competitors and adjusting prices and strategies; distinguishing company services from competitors
  6. representing firm in networking settings and in dealing with large volume customers
  7. participating in the activities of the US National Passport and Visa Association, NAPVS ([www.NAPVS.org](http://www.NAPVS.org)). To assist association members in their work with the Consulates of the Russian Federation, such as negotiating beneficial appointment hours and processing times on their behalf.
  8. ensuring that the Vice President maintains a working affiliate relationship with [travelnow.com](http://travelnow.com)/[hotels.com](http://hotels.com) and [airfarenow.com](http://airfarenow.com) in order to maximize hotel and ticket commissions
  9. overseeing the creation of leads' lists of visa expediting and travel agency clients;

10. overseeing placement of advertisements on Internet sites, forums, newspapers
11. representing the company in dealings with the Russian consulates in Washington, D.C. and San Francisco.

D. Product Development – 15% of weekly hours

1. diversifying and expand the product line of the company
2. developing the Travel Services (hotels, air tickets, tours, corporate, conferences, event planning) branch of the company; to hire a Travel Services Manager in the near future
3. interfacing with Russian IntelService companies and Marketing Department to develop and tailor tours of interest to American customers (e.g. space flights, MiG flights, adventure travel, art tours.)

The petitioner also provided the requested information regarding the beneficiary's subordinates. The petitioner indicated that the company's vice president has a Master of Business Administration (M.B.A.) degree and has "overall responsibility for the daily operations of the company." The petitioner stated that she devotes 25% of her time to direct staff and contractor supervision, administration and operational issues; 25% of her time to "strategizing, big picture issues," in consultation with the beneficiary; 25% of her time on marketing, sales and advertising, including implementation of strategies and campaigns; 10% of her time on financial issues; 10% of her time dealing with high-volume/V.I.P. clients; and 5% of her time on product development. The petitioner also provided a representative list of job duties this employee would perform on a weekly basis.

The petitioner stated that the visa customer service manager is responsible for: answering phone calls pertaining to the petitioner's visa support business; maintaining customers' orders in the database, making required corrections, answering customer questions; relaying information pertaining to visa support processing to the Moscow office; preparing, printing and sending visa vouchers and tracking their receipt; tracking sources of new inquiries; and making suggestions to company executives. The petitioner indicated that this employee devotes 50% of her time to interacting directly with customers, 10-15% of her time reporting to senior staff, and 35-40% of her time filling customer orders, liaising with the Moscow office and consulates, tracking, data entry, filing and administration. The petitioner provided a similar position description for its passport customer service manager.

The petitioner indicated that its financial director is a Certified Public Accountant who is responsible for ensuring compliance with reporting requirements, compiling financial projections, monitoring expenses and income, ensuring that debts are paid, handling payroll, and managing key corporate accounts. The petitioner stated that he spends 10% of his time consulting with company management, 60% of his time on accounting, bookkeeping, auditing, payroll and income and expense-related issues; 5% of his time on reporting issues; 15% of his time on administration, data and programming issues; and 10% of his time on client-related financial issues.

The petitioner indicated that it also employs a part-time information technology consultant who is employed as an independent contractor. His primary duties are related to developing, maintaining and updating the

various company websites. The petitioner also stated that it oversees the activities of a web-hosting company, [REDACTED], and paid this company more than \$18,000 in 2006 to ensure that its websites are reliably hosted and maintained.

The director denied the petition on April 4, 2007, concluding that the petitioner had failed to establish that the U.S. company would employ the beneficiary in a primarily managerial or executive capacity. The director observed that while some of the duties attributed to the beneficiary appeared to be managerial or executive in nature, the record was insufficient to demonstrate that the beneficiary would spend a majority of his time acting in such capacity. The director found that some duties were inadequately defined and did not clearly demonstrate the tasks involved, particularly in relation to the company's promotion, financial and IT projects. The director also noted that given the description of the organization and the duties of all employees of the organization, it was not established that the reasonable needs of the company support or warrant an executive or managerial position. The director specifically questioned whether all of the subordinate employees are employed on a full-time basis. Finally, counsel noted a discrepancy in the beneficiary's job description, noting that the time allocated to his described tasks amounted to 105%.

On appeal, counsel for the petitioner asserts that the beneficiary will be employed in a primarily managerial or executive capacity. Counsel clarifies the amount of time the beneficiary will allocate to his responsibilities, and states that all five positions within the U.S. company are full-time.

With respect to the beneficiary's role within the company, counsel stresses that the petitioner has served more than 50,000 Americans in 2005 and 2006, had over 600,000 visits to its website, tripled its business in visa support services, and dealt with the largest travel agencies in the United States. Counsel asserts that the beneficiary is the executive responsible for these achievements, and is not merely a line professional or front-line supervisor, as suggested by the director. Counsel asserts that the director's analysis lacks an understanding of the nature of the business and its reasonable needs, as required by the regulations. Counsel explains that the petitioner is "overwhelmingly an Internet-based business" which markets, locates and serves its clientele on-line, with a main call center in Russia where thousands of calls are answered from all over the world. Counsel states that because of the nature of the business, the petitioner "does not need to hire dozens of customer service representatives or mid-level managers."

Counsel further contends that the beneficiary's primary role in the business is to "conceive, design and construct" the business's "virtual factory," and strategies to attract customers to it. Counsel asserts that the beneficiary directs the activities of the company and does not perform the day-to-day customer service that comprise the inherent functions of the business. Counsel suggests that USCIS is "locked into an antiquated, pre-Internet interpretation of the law, giving precedence to quantity – number of employees – over quality."

Finally, counsel specifically addresses the director's findings that several of the beneficiary's job duties are not qualifying in nature. Counsel asserts that the beneficiary's contacts and negotiations with the Russian Embassy and with executives of major travel companies are at an executive level and could not be performed by a lower-level employee, such as a customer service representative.

In support of the appeal, the petitioner submits copies of its IRS Forms W-2, Wage and Tax Statement, issued in 2006, the above-referenced company report, reference letters from major clients (██████████ and ██████████) and ██████████ promotional materials, a copy of the petitioner's new lease signed in March 2007, and photographs of the new business premises, among other documents.

Upon review, counsel's assertions are not persuasive. The petitioner has not established that the beneficiary would be employed in the United States 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. § 214.2(l)(3)(ii). 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 response to the director's request for evidence, the petitioner submitted a lengthy position description, and a general outline of how much time the beneficiary would allocate to four broad functional areas. The percentages provided, however, offer little insight into what constitutes the beneficiary's primary responsibilities, as there is no indication of how much time he typically devotes to each of the 26 tasks listed. Further, the description includes a number of overly broad and nonspecific job duties that offer little insight into what the beneficiary primarily does on a day-to-day basis. For example, the petitioner indicated that the beneficiary devotes 15 percent of his time to "product development," including such tasks as "diversifying and expand the product line," developing a "Travel Services branch," and working with the foreign entity's marketing department to "develop and tailor tours of interest to American customers." These duties do not clearly fall under the statutory definition of managerial or executive capacity. Only one other person in the company, the vice president, is claimed to be involved in product development activities, and the petitioner indicates that she devotes only 5 percent of her time to this area. The petitioner has not clearly indicated who within the company supports the beneficiary in developing new services, who currently performs non-qualifying duties associated with travel services (the petitioner indicates that it intends to hire a travel services manager, but it appears no employees are currently assigned to this division), nor has it established that his contributions to designing tour products for Americans are clearly executive or managerial in nature, as it appears that the beneficiary himself would be providing market feedback to the foreign office.

Therefore, the petitioner has not established that the beneficiary's responsibilities associated with the product development function are primarily managerial or executive in nature. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The petitioner indicates that the beneficiary devotes the largest portion of his time, 50 percent of his weekly hours, to "business development." Again, several of the eleven job duties included within this area are either poorly defined and/or not clearly managerial or executive in nature. For example, the petitioner indicated that the beneficiary is responsible for "formulating and directing the implementation of a corporate and retail

strategy for attracting and retaining new clients"; "maintaining competitive advantage using data compiled on US-based competitors"; "representing firm in dealing with large volume customers"; "overseeing the creation of leads"; "ensuring that the Vice President maintains a working affiliate relationship with travelnow.com/hotels.com and airfarenow.com"; and "representing firm in networking settings." While the petitioner indicates that the beneficiary works through the vice president to perform many business development aspects of the business, it is noted that, based on the petitioner's representations, the vice president spends significantly less time working in this area than the beneficiary does as president of the company, and her ability to relieve the beneficiary of all non-qualifying duties associated with the promotion and expansion of the business has not been established. Rather, it appears based on this description that the beneficiary himself is primarily responsible for promoting the company to potential corporate customers and affiliates and performing other marketing and promotion-related tasks.

Furthermore, duties such as "maintaining competitive advantage," "formulating and directing the implementation of strategies," representing the firm with customers, and "overseeing the creation of leads" are inadequate to establish that the beneficiary's duties are primarily managerial or executive capacity. The petitioner does not, for example, indicate who compiles data on U.S. competitors in support of the company's business development efforts or clearly indicate what duties are involved in "overseeing the creation of leads." The AAO cannot accept an ambiguous position description and speculate as to the related managerial or executive duties to be performed. 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. at 1108.

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).

Overall, while the AAO does not doubt that the beneficiary performs some managerial and executive duties, the position description provided does not clearly establish that such duties comprise his primary duties. For example, the AAO is satisfied that the beneficiary would devote some portion of his time to overseeing one supervisory employee, the vice president, and this portion of his time would be considered to be a qualifying managerial duty pursuant to section 101(a)(44)(A)(ii) of the Act, however, this has not been established to be among his primary duties. The other employees, while they have managerial job titles, have not been shown to be performing any managerial or supervisory duties. 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).

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. A review of the record with respect to the petitioner's staffing levels and the nature of the business undermines the petitioner's claim that the beneficiary is relieved from devoting a significant portion of his time to non-qualifying operational duties.

At the time of filing, the petitioner noted that it was in the process of expanding, that it had recently opened a downtown Chicago office to serve corporate clients and walk-in customers, and that it expected to hire at least two additional customer service managers. The petitioner claims to provide the following services: (1) visa support to American private citizens and corporate employees planning to visit Russia; (2) passport support to U.S. legal permanent residents and holding Russian citizenship; (3) airline and hotel reservations for individual and corporate American travelers; (4) tours in Russia; and (5) event planning services for American companies seeking to conduct or participate in conferences, seminars or other events in Russia. Despite claiming to provide all of these services, the petitioner employs a single customer service manager for visa services, and a single customer service manager for passport services. Although the petitioner clearly indicated its intent and need to hire at least three additional personnel, including two customer service managers and a travel services manager, and it indicates that its volume of business continues to grow, its staff size has remained unchanged. On appeal, the petitioner appears to have substituted its claim that it anticipates hiring additional personnel with a claim that most of its functions are automated and therefore its current staffing levels are reasonable. Specifically, the petitioner submits a detailed report explaining all of the new automated systems that have been or will be implemented. However, it is unclear that such "new" automated systems were actually in place at the time the petition was filed. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The AAO acknowledges the petitioner's contention that many of its processes are automated, and such processes would relieve the petitioner's employees from performing routine tasks such as answering basic questions, taking orders and updating customers with billing and tracking information. Even considering *arguendo* that the petitioner established that its current automated systems were in place as of the date of filing, the fact remains that the actual preparation, processing and mailing of visa and passport applications, which appear to comprise the bulk of the petitioner's business, cannot be automated. It is unclear how a single employee, for example, facilitated the processing of over 20,000 visa applications in 2006. Furthermore, the petitioner claims to operate an office open to walk-in customers, which presumably must be staffed so that clients can be dealt with on an individual and personal basis.

Similarly, while the petitioner claims that its operations are "integrated into the operations" of its Russian affiliates, it has not clearly explained how the companies work in concert such that the foreign entities relieve the petitioner from, for example, having staff on hand to assist U.S. companies with event or travel planning or to answer questions from customers during regular U.S. business hours. A broad claim that Russian employees relieve the American workforce from performing many of the services the petitioner claims to provide is insufficient without additional evidence and explanation as to how the companies work together to provide services to American clients. 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)).

Overall, the claim that the petitioner's service-oriented business is able to operate efficiently with only two employees dedicated to providing the actual services it claims to offer, is not persuasive. Counsel correctly observes 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). 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 (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)).

Counsel cites *National Hand Tool Corp. v. Pasquarell*, 889 F.2d 1472, n.5 (5th Cir. 1989), to stand for the proposition that the small size of a petitioner will not, by itself, undermine a finding that a beneficiary will act in a primarily managerial or executive capacity. First, the AAO notes that counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *National Hand Tool Corp.*, where the Fifth Circuit Court of Appeals decided in favor of the legacy Immigration and Naturalization Service (INS). In *National Hand Tool Corp.* the court emphasized that the former INS should not place undue emphasis on the size of a petitioner's business operations in its review of an alien's claimed managerial or executive capacity. The AAO has long interpreted the regulations and statute to prohibit discrimination against small or medium-size businesses. However, consistent with both the statute and the holding of *National Hand Tool Corp.*, the AAO has required the petitioner to establish that the beneficiary's position consists of primarily managerial or executive duties and that the petitioner will have sufficient personnel to relieve the beneficiary from performing operational and/or administrative tasks. Like the court in *National Hand Tool Corp.*, we emphasize that our holding is based on the conclusion that the beneficiary is not primarily performing managerial duties; our decision does not rest on the size of the petitioning entity. 889 F.2d at 1472, n.5.

As noted above, the petitioner's description of the beneficiary's duties includes a number of vague or non-qualifying duties associated with the company's business development and product development functions, such that it cannot be determined, based on the job description alone, whether his duties would be primarily managerial or executive in nature. While the petitioner claims that the vice president assists the beneficiary with sales, marketing and promotional tasks, the fact remains that the beneficiary devotes significantly more

time to such tasks than his subordinate, and many of these tasks have not been shown to be managerial or executive in nature.

Furthermore, considering the beneficiary's duties in the context of the size and nature of the petitioner's organization, it is not clear how the lower level staff are able to fully relieve the beneficiary from participating in operational or administrative tasks. As discussed, the petitioner's explanations regarding the integration of its services with those of its Russian affiliates, and its contentions that its automated system obviates the need for more than two customer service employees, are not persuasive. The record does not demonstrate that the beneficiary has a sufficient number of employees in the United States employed full-time who could provide visa, passport, travel and event services, promote the petitioner's services to affiliates and clients, and handle walk-in customers at the company office. The petitioner's general description of the beneficiary's duties and the limited number of personnel in the United States to perform the petitioner's client-based customer service tasks, undermine the petitioner's claim that the beneficiary's actual duties are primarily managerial or executive in nature.

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

The AAO recognizes that USCIS has approved three L-1A nonimmigrant visa petitions filed by the petitioner on behalf of the beneficiary for employment as its president. In general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by USCIS than nonimmigrant petitions. As stressed by counsel, the AAO acknowledges that both the immigrant and nonimmigrant visa classifications rely on the same definitions of managerial and executive capacity. *See* §§ 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Although the statutory definitions for managerial and executive capacity are the same, the question of overall eligibility requires a comprehensive review of all of the provisions, not just the definitions of managerial and executive capacity. There are significant differences between the nonimmigrant visa classification, which allows an alien to enter the United States temporarily for no more than seven years, and an immigrant visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; *see also* § 316 of the Act, 8 U.S.C. § 1427.

In addition, unless a petition seeks extension of a "new office" petition, the regulations allow for the approval of an L-1 extension without any supporting evidence and USCIS normally accords the petitions a less substantial review. *See* 8 C.F.R. § 214.2(1)(14)(i) (requiring no supporting documentation to file a petition to extend an L-1A petition's validity). Because USCIS spends less time reviewing L-1 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 25 (D.D.C. 2003).

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

Finally, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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

**ORDER:** The appeal is dismissed.