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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B4

[Redacted]

FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: FEB 28 2011

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:

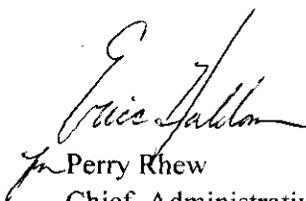
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner, a Georgia corporation that claims to be operating as a wholesale representative, seeks to employ the beneficiary as its vice president. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director denied the petition, concluding that the petitioner had not established that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

On appeal, counsel for the petitioner asserts that the denial of the petition is in error because it fails to take into account the approval of two previous non-immigrant L-1A petitions filed by the petitioner on behalf of the beneficiary. No brief or additional evidence were submitted on 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).

At issue in the present matter is whether the beneficiary will be employed in a primarily managerial or executive capacity by 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) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

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

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

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

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

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on May 7, 2007. The Form I-140 lists the beneficiary's proposed position as vice president of the U.S. company and describes his job as "responsible for the representation of manufacturers of durable goods wholesale in the U.S. market." The Form I-140 also indicates that the U.S. company had eight employees at the time of filing.

The petitioner also submitted a chart depicting its organizational structure in "2005-2007." The chart places the beneficiary as a vice manager under the general manager, who is based in China. Under the beneficiary is a manager [REDACTED] a director who is also listed as "Research Department," and a "Sell market Department," "Trade Department," "Accounting Department," and "Investment Department," each with one employee's name listed on the chart. No other evidence relating to the beneficiary's functions and duties, or the U.S. company's organizational structure and staffing, was provided.

On December 4, 2007, the director issued a request for further evidence (RFE). With respect to the beneficiary's position in the U.S. company, the petitioner was instructed to submit a statement describing the beneficiary's proposed U.S. job assignment in greater detail, including all of the exact duties/functions he will perform, and how the reasonable needs of the organization allow the beneficiary to function primarily as an executive or manager. The petitioner was also asked to state the number of the beneficiary's subordinates and their job titles, degrees and job duties and describe the beneficiary's position in the organizational hierarchy of the company and the supervision he will receive. The director also requested an organizational chart for the U.S. company and evidence of the company's current staffing level as well as the staffing level and volume and frequency of business during the year immediately preceding the filing of the petition.

In a letter dated January 8, 2008 responding to the RFE, the beneficiary, writing on behalf of the U.S. company, indicated that the foreign entity has two other subsidiaries in addition to the petitioner, [REDACTED] and stated the following with respect to the staffing of the U.S. subsidiaries:

The company has [REDACTED] center and [REDACTED] currently & 7 employees. General manager [REDACTED] is in China and he is unable to U.S. [sic] due to his job in China.

[The beneficiary] acts as general manager. He has a bachelor degree and is a senior engineer. He is in charge of human resources, signing all documents including contracts and agreements, plus making plans and setting goals etc.

[REDACTED] doctor, State Massage Therapist and he is the manager of

██████████ is electric engineer and he is the manager of ██████████

██████████ has graduated from college and he is the manager in charge of customer services and trading department.

██████████ has graduated from high school and he is the manager of accounting, shipping and receiving.

██████████ has graduated from high school and he is the manager of sales.

██████████ has graduated from high school. He is the member of the board and in charge of marketing research and developing.

The petitioner provided an organizational chart with the name of the U.S. company. However, the chart appears to incorporate the staff of the petitioner's U.S. claimed affiliates as well. The chart places the beneficiary under the direction of the general manager, who is based in China. ██████████ who is both a director and the "research department," reports directly to the beneficiary. The other six employees described above are also placed under the beneficiary. However, unlike the original chart submitted with the Form I-140, the employees in the trade, accounting and "sell market" departments all appear to report to both the beneficiary and the manager of ██████████ who also reports to the beneficiary.¹ The manager of the ██████████ who also reports to the beneficiary, appears to be the only employee in that entity. It is not clear based on the chart whether the employees listed under the beneficiary are employed by the named petitioner or its affiliates. The petitioner did not submit the requested detailed description of the beneficiary's job duties, nor were there any descriptions of job duties for the rest of its staff, as the director requested. No other evidence of the U.S. company's staffing level at the time of filing or during the preceding year was provided.

The petitioner submitted its IRS Form 1120-A, U.S. Corporation Short-Form Income Tax Return, for the year 2006, which indicates that the company paid \$6,000 in "compensation of officers" and \$26,000 in "salaries and wages" that year. The petitioner also submitted the beneficiary's Form W-2 for the year 2006, which discloses that the beneficiary was paid \$25,999.92 in wages, tips, and other compensations by the U.S. company during that year.

On February 25, 2009, the director denied the petition, concluding that the petitioner had not established that the beneficiary will be employed by the U.S. entity in a primarily managerial or executive capacity. Specifically, the director observed that the "petitioner's claim is primarily based on a set of broad job responsibilities, which suggest a general sense of the beneficiary's heightened degree of discretionary authority but which fail to convey any understanding of what the beneficiary would actually be doing on a daily basis." The director also noted that the petitioner failed to submit

¹ It is noted that the "Investment Department" from the original chart does not appear on the new chart, and a different person was listed under "Sell market Department" on the original chart. The person identified as the manager of ██████████ did not appear on the original chart.

the detailed description of the duties of the beneficiary and his subordinates as requested. Further, the director observed, although the petitioner claimed that two of the beneficiary's subordinates have baccalaureate or bachelor's degrees, no evidence of the degrees was offered. Finally, the director noted that the letter responding to the RFE was written by the beneficiary and not the petitioner.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (USCIS) has previously approved an L-1 initial petition and extension filed by the same petitioner for the same beneficiary, in the same position, based on the same evidence that was presented in this petition. Counsel contends that the director failed to acknowledge that the beneficiary, as vice president, is an officer of the petitioner and duly authorized to execute documentation on behalf of the petitioner. Counsel further contends that the director failed to explain why the fact that only two out of six of the beneficiary's subordinates have bachelor's degrees would be a disqualifying factor.

Upon review, the AAO finds that the petitioner has failed to establish that the beneficiary would be employed in the United States in a primarily executive or managerial 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, which must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *See* 8 C.F.R. § 204.5(j)(5). 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.

In addition, it is noted that 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 prove 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). Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that the beneficiary's duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act.

Initially, the AAO notes that the record contains inconsistent references to the title of the petitioner's proposed position within the U.S. company. The Form I-140 states the petitioner's title as "vice president." However, in the letter responding to the RFE, the petitioner indicated that the beneficiary "acts as general manager" within the company, and on the organizational chart, the beneficiary is listed as "vice general manager." The petitioner has not explained these inconsistent references to the beneficiary's job title. 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).

Further, the petitioner has not provided requested information regarding the beneficiary's proposed job duties. In the Form I-140, the petitioner indicated only that the beneficiary is "responsible for the representation of manufacturers of durable goods wholesale in the U.S. market." Even though the director expressly requested that the beneficiary's jobs duties in his U.S. position be described in greater detail, the petitioner failed to provide that information. The petitioner's response to the RFE stated only that the beneficiary "is in charge of human resources, signing all documents including contracts and agreements, plus making plans and setting goals etc." This vague and nonspecific description of the beneficiary's duties fails to demonstrate what the beneficiary does on a day-to-day basis. 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). Further, a detailed description of the beneficiary's proposed duties is critical in the determination of whether the beneficiary would be functioning in an executive or managerial capacity. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). The 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).

In addition, although the petitioner claims that the beneficiary supervises other employees of the company, information in the record regarding the U.S. company's staff is insufficient and inconsistent. The petitioner claims on the Form I-140 that the company has eight employees, but the organizational chart submitted with the Form I-140 lists nine persons, two of whom are "in China." Further, the January 8, 2008 letter and the organizational chart provided in response to the RFE suggest that the employees under the beneficiary's supervision may work for the petitioner's claimed U.S. affiliates rather than the petitioner itself.² It is noted that the information provided in response to the RFE is not consistent with the organization chart in the initial submission. Further, the staffing structure of the petitioner's U.S. affiliates, and the beneficiary's role within those entities, are not relevant to this analysis. Altogether, the evidence of record fails to reveal the staffing and organizational structure of the U.S. petitioner itself.

Furthermore, the petitioner's tax documentation for 2006 does not support the claim that the petitioner was paying the salary of any employee other than the beneficiary. The petitioner's IRS Form 1120A showed that the petitioner paid \$6,000 in "compensation of officers" and \$26,000 in "salaries and wages" that year, whereas the beneficiary's Form W-2 for 2006 discloses that the beneficiary was paid \$25,999.92 in salary for that year. The petitioner provided no explanation for the inconsistency between its claims regarding the number of employees on its staff and the apparent lack of salary paid to employees as evidenced by its tax return. Again, any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective

² The AAO acknowledges that the petitioner submitted certain supplemental documentation relating to [REDACTED]. However, such documentation does not constitute sufficient evidence of the claimed affiliate relationship between those entities and the petitioner.

evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-592. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

Without accurate and detailed information regarding the existence, functions or duties of other employees on the U.S. company's staff, it is not possible to determine to what extent the non-managerial duties relating to the operations of the company are actually performed by personnel other than the beneficiary to allow the beneficiary to function in a *primarily* managerial capacity.

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. See § 101(a)(44)(A)(ii) of the Act. 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. In this instance, as the evidence submitted does not allow for a definitive determination of the beneficiary's subordinate staff within the U.S. company, the AAO cannot determine whether the beneficiary primarily supervises and controls the work of other supervisory, professional, or managerial employees and therefore would qualify as a "personnel manager."

The record also does not support the conclusion that the beneficiary would qualify as a "function manager." 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's cursory description of the beneficiary's job responsibility falls far short of establishing that the beneficiary's daily duties are in fact primarily attributable to managing a function rather than performing the duties related to the function. Further, given the lack of evidence regarding the beneficiary's subordinate staff, it is unclear that the beneficiary actually has an adequate staff that would relieve him from performing non-qualifying duties. Again, 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. at 604. Accordingly,

the AAO cannot conclude that the petitioner has established that the beneficiary manages an essential function, such that he could be considered a function manager.

In light of the foregoing, the AAO concurs with the director's conclusion that the petitioner has failed to establish that the beneficiary would be employed in a primarily executive or managerial capacity in the United States. For that reason, the petition will be denied.

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

Section 203(b)(1)(C) of the Act requires the petitioner to establish that "in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, the alien has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof," and that such foreign entity has a qualifying relationship with the U.S. company (as discussed further below). The relevant regulation further specifies that if the beneficiary is already in the United States "working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, [the petitioner must demonstrate that] in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity." 8 C.F.R. § 204.5(j)(3).

In the initial petition, the petitioner did not provide any evidence or indication that the beneficiary was employed by a foreign entity for the requisite period of time prior to his entry to the United States in L-1A status. In response to the director's express request for additional evidence of foreign employment, the petitioner stated that the beneficiary co-founded [REDACTED] in 1992 and found [REDACTED] in December 1998, and was vice chairman of the board and vice general manager of both entities during an unspecified time period. The petitioner further stated that the beneficiary founded the U.S company in August 2001 and came to the United States in October 2003 as vice general manager, and then as general manager from November 2004 to the present. The petitioner further stated that "there's no any title [*sic*] in China companies." In response to the RFE, the petitioner did not provide any information relating to the beneficiary's position overseas, as requested by the director. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The 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).

In the absence of any evidence relating to his position and job responsibilities overseas prior to his transfer to the United States, the AAO finds that the petitioner has failed to establish that the beneficiary was employed abroad in an executive or managerial capacity for at least one out of the three years preceding the filing of this petition, as required by the statute. For this additional reason, the petition will be denied.

In addition, in order to qualify for this visa classification, the petitioner must establish that a qualifying relationship exists between the United States and foreign entities in that the petitioning company is the same employer or an affiliate or subsidiary of the foreign entity. *See* section 203(b)(1)(C) of the Act. The AAO finds the petitioner has failed to establish that it has a qualifying relationship with a foreign entity that had employed the beneficiary prior to the filing of the petition.

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

Affiliate means:

- (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
- (B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

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.

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

The petitioner claims that it is the wholly owned subsidiary of the entity in China, [REDACTED] that was the beneficiary's employer prior to his entrance to the U.S. in L1-A status in October 2003. In support of this claim the petitioner submitted a copy of three undated stock certificates, numbered 1 through 3, each certifying that [REDACTED] is the registered holder of "ten thousand" shares of the U.S. company. Thus, based on the certificates, [REDACTED] holds 30,000 of the petitioner's shares. However, each certificate states on its face that the number of shares authorized by the company is 10,000. The petitioner did not account for this inconsistency regarding its share issuance and ownership. Again, 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. at 591-592. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

Moreover, as general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and

control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986). The petitioner has not provided any documentation evidencing its ownership, other than the stock certificates. Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

Accordingly, the AAO finds the petitioner has failed to demonstrate that the U.S. petitioner has a qualifying relationship with the foreign entity that employed the beneficiary overseas. For this additional reason, the petition will be denied.

Finally, the AAO recognizes that USCIS previously approved two L-1A nonimmigrant visa petitions filed by the petitioner on behalf of the beneficiary, as counsel pointed out. However, in general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by USCIS than nonimmigrant petitions. The AAO acknowledges that both the immigrant and nonimmigrant visa classifications rely on the same definitions of managerial and executive capacity. *See* §§ 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Although the statutory definitions for managerial and executive capacity are the same, the question of overall eligibility requires a comprehensive review of all of the provisions, not just the definitions of managerial and executive capacity. There are significant differences between the nonimmigrant visa classification, which allows an alien to enter the United States temporarily for no more than seven years, and an immigrant visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; *see also* § 316 of the Act, 8 U.S.C. § 1427. 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. *See* 8 C.F.R. § 103.8(d); 8 C.F.R. § 103.2(b)(16)(ii). 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 and contradictory 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 USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Due to the material deficiencies in the present record, as discussed above, the AAO finds that the director was justified in departing from the previous nonimmigrant approval by denying the present immigrant petition.

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). When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.