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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE:



OFFICE: TEXAS SERVICE CENTER

Date:

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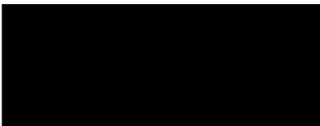
Petitioner:



Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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 preference visa petition was denied by the Director, Texas Service Center. The petitioner subsequently filed a motion to reopen and reconsider. The director then entered two separate and contradictory decisions. The decision of the director denying the petition will be affirmed.

The procedural history of this case is extremely confused. In an unusual and inappropriate procedural twist, the director appears to have entered two separate decisions, both denying and approving the petition.¹ On November 17, 2009, the director denied the petition on multiple grounds. On December 21, 2009, the petitioner filed the motion to reopen and reconsider. On or about March 3, 2010 the director reviewed the points covered in the initial denial and addressed the arguments that the petitioner put forth in the motion. The director determined that the petitioner failed to establish eligibility for the benefit sought and certified the decision to the AAO for review. The record further shows that on March 11, 2010, the director issued a separate decision on the petitioner's motion. This matter as well has been certified to the AAO for review. Although the director recommends withdrawal of the prior decision on the basis of the finding that the petitioner has overcome the grounds cited for denial, the AAO notes that the director's second decision also indicates that the petitioner failed to establish a critical portion of the requisite qualifying relationship.

The director may approve a petition only if he determines that the facts stated in the petition are true. Section 204(b) of the Act. The director does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof. *See* section 291 of the Act.

As the director's order and analysis in that decision are not consistent with one another, the AAO will withdraw the director's decision on motion and affirm the March 3, 2010 decision in which the director recommended that the petition be denied.

The petitioner is a Florida corporation that seeks to employ the beneficiary as its president and director of operations. 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. In the March 3, 2010 decision that the director has certified to the AAO, the director denied the petition based on the following three independent grounds of ineligibility: 1) the petitioner failed to establish that it has a qualifying relationship with the beneficiary's foreign employer; 2) the petitioner failed to establish that the U.S. and foreign entity are actively engaged in doing business; and 3) the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity.

On motion, counsel disputed the director's adverse finding with regard to the issue of a qualifying relationship and submitted evidence in support of his argument. It is noted that, while the petitioner was allowed an opportunity to submit further evidence addressing the additional findings that were issued in the

¹ While the director's conflicting decisions were inappropriate, the nature of the petition leads the AAO to conclude that it was appropriate for certification, rather than requiring the petitioner to file an appeal with fee. The certification process is intended for cases with unusually complex or novel issues of law or fact. 8 C.F.R. § 103.4(a)(1). Given the complexity of the claimed relationships between multiple multinational corporations, and the novel issue of bearer stock certificates, the director properly certified the decision to the AAO for review.

March 3, 2010 decision, there is no indication that the record has been supplement with additional evidence or information. Therefore, the AAO will issue its decision based on the record as presently constituted.

Section 203(b) of the Act states in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

The first issue in this proceeding is whether the petitioner has a qualifying relationship with a foreign entity.

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.

In support of the Form I-140, the petitioner submitted a letter dated March 4, 2009 in which it indicated that it is 100% owned by [REDACTED]. The petitioner further stated that while [REDACTED] was previously owned by [REDACTED] the beneficiary's prior employer in Brazil, Swift is currently owned by [REDACTED] another Brazilian entity. The petitioner also provided the following supporting documents:

1. A copy of its articles of incorporation, which was executed on February 3, 1995. Article III of the document showed that the petitioner was authorized to issue 1,000 shares of stock with a par value of one dollar per share;
2. A copy of stock certificate No. 4, which was executed on February 7, 1995, showing that [REDACTED] was the recipient of 1,000 shares of the petitioner's stock;
3. [REDACTED] articles of association showing that the company was authorized to issue 5,000 shares of its stock with a par value of one dollar per share;
4. [REDACTED] share certificate Nos. 1 and 2, each representing 2,500 shares on March 14, 1996, indicating that "the bearer" was the holder of the stock; and
5. [REDACTED] share register reiterating the information conveyed in certificate Nos. 1 and 2.

On August 8, 2009, the director issued a request for additional evidence (RFE), instructing the petitioner to supplement the record with further documents to establish the existence of a qualifying relationship with a foreign entity per regulatory requirements. Namely, the petitioner was asked to provide proof that the foreign entity paid for its shares in the U.S. entity, all the stock certificates issued by the U.S. entity to the present date, and the U.S. entity's stock ledger.

In response, counsel submitted a letter dated September 8, 2009, claiming that the petitioner initially issued 1,500 shares to [REDACTED]. Counsel further claimed that [REDACTED] issued all of the petitioner's shares to [REDACTED] beneficiary's former employer in Brazil, and that in 2002 Swift issued 500 shares of the petitioner's stock to [REDACTED] a company that was purportedly 100% owned by [REDACTED]. Counsel stated that in 2007, [REDACTED] sold its shares of the petitioner's stock back to the petitioner and that subsequent to this transaction, [REDACTED] issued its bearer shares to [REDACTED]. Counsel asserted that [REDACTED] new ownership ensured that a qualifying relationship would continue to exist between the U.S. petitioner and a foreign entity. The petitioner resubmitted its articles of incorporation and stock certificate No. 4 and also provided the following additional documents:

1. Copies of stock certificate Nos. 1-3 each issuing 500 shares of the petitioner's stock to [REDACTED] respectively. Each certificate had the word "Void" written diagonally across the middle of the document.
2. A copy of the petitioner's stock certificate No. 5 issuing 500 shares of its stock on May 6, 2002 to [REDACTED]. The word "Cancelled" was written diagonally across this document.
3. A document dated April 17, 2007, titled "Receipt," memorializing an agreement between the petitioner and [REDACTED] to sell back to the petitioner the 500 shares of stock that were previously issued to [REDACTED]. The agreement was based upon the petitioner paying a total of \$250,000 for the 500 shares.
4. A copy of stock certificate No. 6 showing that the petitioner issued 500 shares of its stock to [REDACTED] on May 6, 2002.
5. A copy of the petitioner's stock transfer ledger, listing a total of six stock transfer transactions. The first two transactions dated back to February 1995 and involved the petitioner issuing 1,000 shares of its stock to [REDACTED] via stock certificate No. 4 and another 500, also issued to [REDACTED] via stock certificate No. 6. The third transaction was recorded as the issuance of 500 shares of the petitioner's stock to [REDACTED] in May 2002 via stock certificate No. 5 following by cancellation of stock certificate No. 5 in April 2007, which resulted in the 500 shares being transferred back to the petitioner. Three additional transactions are listed on page two of the stock ledger, beginning with two transactions that are shown as having taken place on May 6, 2002, including [REDACTED] receipt of 500 shares of the petitioner's stock following the surrender of stock certificate No. 4, as well as an unidentified transaction in the amount of \$250,000 in exchange for 500 shares of stock. The recipient of these shares was not named and the date of the latter transaction was not provided. The remaining transaction is shown as having taken place on April 17, 2007 in the amount of \$250,000, resulting in a purchase by the treasury that is shown as having been immediately cancelled. The petitioner did not indicate that any stock certificates were issued to memorialize the two latter transactions.
6. A document titled "Written Consent of Sole Director of [the petitioner] in Lieu of Organizational Meeting" indicating that [REDACTED] purchased 1,000 shares of the petitioner's stock in exchange for payment of \$1,000. The document was executed on February 7, 1995.
7. Copies of [REDACTED] bearer shareholder certificate Nos. 1 and 2 and corresponding stock registry accompanied by a document titled "Affidavit of Bearer," dated September 8, 2009 and signed by [REDACTED] who stated that he is the majority shareholder of [REDACTED] the company that is the 100% owner and bearer of [REDACTED] outstanding shares.

In a decision dated November 17, 2009, the director denied the petition concluding that the requisite qualifying relationship does not exist. The director based this conclusion on the finding that the U.S. petitioner and the beneficiary's foreign employer "are unrelated business entities." The petitioner noted that while the petitioner claimed that [REDACTED] the entity that currently owns the petitioner, was previously owned by the foreign entity that employed the beneficiary, the petitioner claims that [REDACTED] is currently owned by [REDACTED]. The director questioned the probative value of the affidavit, observing that the document lacked a notary stamp and a witness signature. In light of the diminished probative value of the affidavit, the director concluded that the petitioner failed to establish the claimed parent-subsidiary relationship with [REDACTED].

Following the director's denial, the petitioner filed a motion to reopen and reconsider in support of which counsel submitted a letter in which he reiterated prior statements with regard to the petitioner's earlier relationship with the beneficiary's foreign employer and the change that has resulted in a more recent relationship that was allegedly formed as a result of [REDACTED] issuing its bearer shares to [REDACTED]. The petitioner also submitted a document titled "Supplement Affidavit of Bearer." While the content of the latter document was the same as that contained in the prior affidavit, the new affidavit included the signatures of two witnesses as well as a notary stamp and thus cured the deficiencies that diminished the probative value of the earlier affidavit. The new affidavit restated that Swift is the petitioner's direct owner and that [REDACTED] is the indirect owner by virtue of its ownership of [REDACTED].

In a decision dated March 11, 2010 the director erroneously found that the petitioner overcame the grounds stated for denial. The director also found that the petitioner failed to establish that [REDACTED] "has purchased, controlled, or owns [REDACTED] which is the company that is listed as owning 1,000 shares of [the petitioner]." As the director has certified this decision to the AAO, a comprehensive review of the record has been conducted to reach a new conclusion.

First, with regard to the director's finding that the petitioner had overcome the grounds for denial, the director erred in failing to acknowledge that the earlier decision issued multiple findings and that not all adverse findings had been overcome by the petitioner's subsequent submissions. Specifically, rather than overcoming the main ground that was the basis for a finding of ineligibility, the petitioner merely overcame an adverse evidentiary finding that concerned the documentary deficiencies of the initially submitted affidavit. A review of the director's original decision shows that the director made an adverse finding with regard to the probative value of the affidavit due to a missing notary stamp and witness signature. While the AAO acknowledges that these deficiencies were indeed rectified with the submission of a second affidavit, which contained both a notary stamp and two witness signatures, the primary basis for a finding of ineligibility was the petitioner's failure to establish that it currently has a qualifying relationship with the foreign entity that previously employed the beneficiary abroad. The petitioner's new submissions in support of the motion did not overcome this key adverse finding.

Furthermore, the petitioner readily admitted and provided several documents that indicate that [REDACTED] through its ownership of [REDACTED] the petitioner's direct parent entity, is the petitioner's true owner. According to the petitioner, the beneficiary's foreign employer surrendered its ownership of the petitioner and was therefore not the parent entity at the time the Form I-140 was filed. The AAO notes that, regardless of the sufficiency of the documentation establishing [REDACTED] as the petitioner's true owner and regardless of any

evidence that the beneficiary's foreign employer once owned the U.S. petitioner, the requisite qualifying relationship must exist at the time of filing in order to establish eligibility. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). In the present matter, neither the evidence of record nor the petitioner's own statements indicate that such a relationship existed at the crucial time. Therefore on the basis of this conclusion, the AAO hereby affirms the director's original denial of the petition.

The record further shows that, in addition to the director's decision regarding the petitioner's motion to reopen and reconsider, the director issued another decision on March 3, 2010, which was also certified to the AAO.

Here again, the director addressed the issue of the petitioner's qualifying relationship with a foreign entity. Although the director duly noted the findings of the original denial, which properly focused on the petitioner's relationship, or lack thereof, with the beneficiary's foreign employer, it strayed from the proper analysis in the more recent decision, focusing instead on the sufficiency of the evidence establishing common ownership and control between the petitioner and [REDACTED]. Specifically, the director determined that the bearer shares, which were issued to [REDACTED] by [REDACTED] the purported direct owner of the petitioning entity, were not sufficient to establish [REDACTED] ownership and control of [REDACTED] and therefore failed to establish [REDACTED] indirect ownership of the petitioner. The director determined that by its very nature, a bearer share, which bestows ownership upon any party that physically holds the certificate and does not officially register and track the owner of the stock, lacks the regulation and control to which common shares are subject.

While the director's analysis with regard to the definition and significance of a bearer share certificate is generally correct, the AAO finds that such analysis was unnecessary, as it is ultimately irrelevant to the matter at hand. Instead, the goal is to determine whether the petitioner had a qualifying relationship with the beneficiary's foreign employer at the time of filing and whether such a relationship, if previously existed, continues to exist.

Reverting back to the previous discussion of this issue, the AAO again notes that the record lacks evidence to establish that the petitioner had a qualifying relationship with the beneficiary's foreign employer at the time of filing. According to the petitioner's own claims, that relationship, even if previously existed, ceased to exist prior to the filing of the Form I-140 when [REDACTED] the beneficiary's foreign employer, relinquished its ownership interest in the petitioning entity. Any relationship that may have been formed and which may currently exist between the petitioner and [REDACTED] cannot be deemed as a qualifying relationship, as the petitioner does not claim that [REDACTED] was the beneficiary's foreign employer. While [REDACTED] ownership of the petitioning entity, if established, would qualify the petitioner as a *multinational* entity based on the definition found at 8 C.F.R. § 204.5(j)(2), the question of whether or not a qualifying relationship exists is a separate issue that requires the existence of common ownership and control between the petitioner and the beneficiary's foreign employer. *See 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).

As these key elements of common ownership and control between the petitioner and the beneficiary's foreign employer have not been shown to have existed at the time of filing, the AAO cannot conclude that the requisite qualifying relationship has been established. Accordingly, while the AAO affirms the director's

ultimate decision to deny the petition, it finds that the basis for such conclusion was misguided and not in line with the relevant regulatory requirements.

The next two issues require an assessment of the petitioner's business activity as well as the business activity of the foreign entity that shares common ownership and control with the petitioner, [REDACTED]. The record does not establish whether [REDACTED] the beneficiary's prior employer in Brazil, has been doing business.

First, the AAO will review the record to determine whether [REDACTED] and the petitioner are doing business such that the petitioner meets the definition of *multinational*. As defined at 8 C.F.R. § 204.5(j)(2), a *multinational* entity is one that conducts business in two or more countries, one of which is the United States. Additionally, doing business is defined as "the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office." *Id.*

While the record shows that the petitioner provided promotional material and financial documents belonging to both entities, such documents do not establish that either entity is currently doing business. The following additional documents were also submitted in support of the petitioner's motion:

1. Untranslated emails between [REDACTED] and the petitioner accompanied by [REDACTED] \$ and a bank wire transfer showing payment of the amount indicated in the [REDACTED] from March 11, 2009.
2. Emails from September 2009 establishing the foreign entity making arrangements for shipments of business related purchases.
3. The foreign entity's purchase invoice dated September 25, 2006 for equipment purchased and bank balance confirmation establishing the foreign entity's payment for the purchase.
4. Emails and purchase/sales invoices from October, November, and December 2009 regarding purchases made by the petitioner. One invoice from December 2009 shows the petitioner as the party being billed for merchandise that was shipped to the foreign entity.
5. A proforma purchase invoice dated October 14, 2009, two wire transfer documents showing payments made towards the invoice balance, and an invoice and packing list from November 30, 2009 showing the petitioner as the purchasing party.

First, with regard to the foreign emails that were not accompanied by certified English language translations, the AAO cannot determine whether the untranslated evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

Notwithstanding this deficiency, the above documentation is not sufficient to establish that the U.S. and foreign entity were engaged in "the regular, systematic, and continuous provision of goods and/or services" at the time the Form I-140 was filed. While the AAO acknowledges the March 11, 2009 invoice, a single document

is simply not sufficient to establish ongoing business transactions for either entity. The AAO further notes that 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. at 49. As such, the invoices that represent business transactions that took place subsequent to the filing of the petition are not probative, as they do not establish that the petitioner and the foreign entity were doing business at the time of filing. Similarly, the foreign entity's invoice from 2006, which is evidence of a business transaction that took place several years prior to the filing of the petition, also lacks probative value, as it does not establish that the entity was doing business at the time of filing.

In summary, while some of the submitted documents establish some random business activity by both entities, these documents are not sufficient to establish that such business activity was ongoing on a regular, continuous, and systematic basis. It therefore follows that the petitioner similarly failed to establish that it had been doing business during the one year period prior to the filing of the Form I-140, per 8 C.F.R. § 204.5(j)(3)(i)(D).

Additionally, the AAO notes that even if the petitioner had submitted sufficient evidence to establish that it and Geotech were both doing business at the time of filing, USCIS may not overlook the fact that Geotech is not the foreign entity that employed the beneficiary abroad. This issue is separate and distinct from the issue of whether the petitioner is a multinational entity. Merely establishing that the petition fits the definition of multinational is not sufficient to meet eligibility requirements. As previously stated, the petitioner must establish the existence of a qualifying relationship with the foreign entity that employed the beneficiary abroad and such a relationship must exist at the time of filing. As concluded above, the petitioner has failed to provide sufficient evidence to establish that it meets the definition of multinational or that it has been doing business in the United States within the time and in the manner described at 8 C.F.R. § 204.5(j)(3)(i)(D).

The remaining issue in this proceeding is whether the petitioner established that it would employ the beneficiary in the United States in a qualifying managerial or executive capacity.

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

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

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

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

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

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

In the petitioner's March 4, 2009 support letter, the petitioner stated that the beneficiary formulates and implements company policies and sets long-range goals and objectives. The petitioner provided the following description of the beneficiary's proposed employment:

[The beneficiary] negotiates contracts with Brazilian companies for the sale of computers and computer parts. [He] directs and manages the flow of products being imported and exported in order to ensure their smooth and efficient handling.

[The beneficiary] is responsible for formulating operational goals and policies. He reviews activity reports and financial statements to determine progress and status in attaining the company's operational objectives and maximum profitability. He revises the objectives and plans in accordance with operational needs He formulates, directs and analyzes the operational activities, programs and budgets[,] oversees the company's operations and ensures that maximum use of equipment, facilities and personnel are being utilized. [The beneficiary] confers with other executives and managers to establish operations objectives, develop organizational operation policies and [to] coordinate functions and operations between the Brazil and Miami offices He approves expenditures to acquire equipment

[The beneficiary]'s primary responsibility is directing and managing the business operations in the United States and coordinates all business transactions with the company's parent in Brazil. As [p]resident[,] he presides at all corporate meetings and ensures that all orders and resolutions are carried out into effect. [The beneficiary] has ultimate responsibility for decisions affecting the overall management and operation of [the petitioner]. He consults with managerial staff regarding departmental issues. . . .

[The beneficiary]'s is responsible for analyzing supply and pricing patterns and [for] evaluating product trading. He exercises wide latitude and discretionary decision making and, through his subordinate personnel, identifies and develops trading relationships with suppliers, develops and implements strategies to focus on customer base and seeks and evaluates acquisition opportunities. [The beneficiary] is in charge of managing vendor/supplier contracts and freight forwarder company contracts.

[The beneficiary] revises, creates and implements new systems establishing better procedures and quicker company response to our customers' orders and request[s] for service. He recommends solutions to solve administrative and personnel problems which are essential and beneficial to the company's multi-national operations. He is responsible for the hiring and termination of employees.

In the RFE, the director instructed the petitioner to provide supplemental information about the beneficiary's proposed U.S. employment, including a list of the beneficiary's job duties, the percentage of time the beneficiary would spend performing each task, and the job descriptions, job titles, and educational levels of the beneficiary's subordinates. The petitioner was also asked to provide an organizational chart illustrating its current organizational structure with the names of employees and their positions clearly depicted in addition to the beneficiary's proposed position within the hierarchy.

In response, the petitioner restated the job description previously provided, which did not include a list of specific job duties and corresponding time constraints to show how the beneficiary's time would be allocated among specific tasks. It is noted that failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The petitioner did, however, include the requested organizational chart, which illustrated a three-tier structure headed by the beneficiary. The chart depicted three direct subordinates of the beneficiary, including a general manager, a sales manager, and an RMA manager. The general manager was depicted as having a logistics coordinator as his direct subordinate; the sales manager was shown as having a sales person as her direct subordinate; and the RMA manager was shown as overseeing the work of technicians. The chart did not indicate the number of positions employed or the names of any technicians. Lastly, while the chart includes external contractors in the third-tier of the hierarchy, the petitioner did not specify what types of contractors would be used, what types of services the contractors would perform, or the names of individuals or companies that would be performing the contracted services.

In the decision that has been certified to the AAO, the director noted the petitioner's failure to comply with the RFE request for a list of specific job duties and the time constraints that correspond to each duty. The director found that the petitioner failed to "enhance an understanding of the precise daily duties the beneficiary performs" thereby precluding USCIS from being able to conclude that the primary portion of the beneficiary's time would be devoted to tasks within a qualifying managerial or executive capacity.

Although the petitioner was allowed a 30-day briefing period in which to submit additional documents to address the director's adverse findings, the petitioner did not supplement the record with any further documentation regarding the beneficiary's proposed job duties.

In reviewing the petitioner's submissions, the AAO agrees with the director's findings. First and foremost, the AAO cannot overlook the petitioner's failure to comply with the director's request for a more definitive description of job duties, particularly where the original description that the petitioner submitted was so vague. When examining the executive or managerial capacity of the beneficiary, the USCIS will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). 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).

In the present matter, the petitioner paraphrased portions of the relevant statutory definition repeatedly throughout the job description, focusing heavily on the beneficiary's authority with regard to formulating and implementing company policies and setting goals and objectives. However, these vague statements fail to convey a meaningful understanding of the beneficiary's daily activities. It is noted that the actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. The petitioner failed to specify what actual tasks the beneficiary performed in his effort to formulate, direct, and analyze operational activities; nor did the petitioner explain how the beneficiary directs, manages, and coordinates business transactions. The petitioner also failed to explain how formulating the company budget, developing trading relationships with suppliers, developing strategies to focus on the customer base, and managing vendor/supplier and freight forwarding contracts qualify as managerial or executive tasks. There is no indication as to the amount of time spent performing these non-qualifying tasks.

In sum, the petitioner failed to specify what managerial or executive tasks the beneficiary would perform, nor did the petitioner provide the necessary information that would enable the AAO to conclude that the primary portion of the beneficiary's time would be spent performing tasks within a qualifying capacity.

The AAO notes that USCIS approved other petitions that had been previously filed on behalf of the beneficiary as both an L-1A and as an H-1B.² The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 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).

² USCIS records indicate that the beneficiary has been the recipient of multiple H and L petition approvals since 1996. The AAO notes that USCIS denied at least one petition [REDACTED]. However, at the time of filing the present I-140 visa petition and I-485 application to adjust status, the beneficiary had been granted H-1B status for over seven years and five months. Prior to that period of stay as an H-1B, USCIS had granted multiple L-1A petitions. *But see* 8 C.F.R. § 214.2(h)(13)(iii)(A) (prohibiting an H-1B nonimmigrant from seeking readmission, extension of stay, or change of status when he or she has spent 6 years in the United States as an H and/or L nonimmigrant).

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

Accordingly, 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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.