



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JUN 04 2013

OFFICE: TEXAS SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, ("the director") denied the preference visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The U.S. petitioner's corporate documents were initially filed in the State of Florida in March 2007 and the petitioner's active status was reinstated on January 3, 2011. The petitioner states on the Form I-140, Immigrant Petition for Alien Worker, that its type of business is "services and exports." The petitioner indicates that it employs 12 personnel and reported a gross annual income of \$140,000 when the petition was filed. It seeks to employ the beneficiary as its 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.

On October 10, 2012, the director denied the petition determining that the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the director's basis for denial of the petition was erroneous and contends that the evidence of record is sufficient to satisfy the petitioner's burden of proof in that the evidence establishes the beneficiary's eligibility for the requested classification.

I. The Law

To establish eligibility for the employment-based immigrant visa classification, the petitioner must meet the criteria outlined in section 203(b) of the Act. 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.

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 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.

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.

II. The Issue on Appeal

The issue in this proceeding is whether the petitioner submitted sufficient evidence to establish that the beneficiary would be employed in a primarily managerial or executive capacity.

In a letter appended to the petition, the petitioner explained its purpose is: to establish a communication and distribution center in Florida on behalf of its Hong Kong parent company to process orders; to establish a new line of investment in Florida bistros; and to operate as a hedging tool to mitigate the exchange rate risks derived from merchandise brokerage activities in multiple currencies. The petitioner indicated that the foreign company would be financially responsible for the petitioner. With regard to the proffered position, the petitioner stated that "the beneficiary has and will continue to have leadership responsibility for managing and directing the entire U.S. establishment and operations." The petitioner listed the beneficiary's duties as follows:

1. Conduct general administration affairs of the U.S. [s]ubsidiary including planning, formulating and implementing administrative and operational policies and procedures to ensure the commercial success of the U.S. operation (10% of the time);
2. Act as liaison and representative/delegate from the foreign parent company in the U.S. to insure an effective communications, plan and coordinate the operations of both the U.S. and foreign parent company ensuring the U.S. operation aligns the business practices with those of the foreign parent company (15% of the time);
3. Select and engage outside business consultants, CPA and attorneys, work with them to analyze U.S. local market to set practical business and financial goals for the U.S. operation; engage in long-range planning, identifying business opportunities in the U.S. and communicate findings to foreign parent company (15% of the time);
4. Administer operating progress, review strategic goals and initiatives, set realistically workable forecasts under the current local economic condition; communicate such goals to foreign parent company and obtain the approval from the foreign parent company (10% of the time);
5. Evaluate business plans and proposals provided by manager, oversee negotiation process of office leases for new business location, acquisition agreements for existing business; engage outside legal counsels (10% of the time);
6. Review financial statements prepared by outside CPA, sales and operating activity reports prepared by subordinating manager to measure company productivity and goal achievements (10% of the time);
7. Work with U.S. banks/finance institution to obtain loans and request additional funding from the foreign parent to obtain financial supports to fund U.S. operations (10% of the time);
8. Oversee the implementation of sales strategies, promotional activities for the products of the foreign parent company for purpose of expanding its market share in the U.S. (10% of the time);
9. Hire/train managers to carry out the U.S. operational plans and accomplish the commercial objectives of foreign headquarter; develop adequate U.S. personnel according to current business needs (10% of the time).

The petitioner stated that the beneficiary would devote nearly all of her professional time performing essential managerial functions. The petitioner also provided a letter signed by the foreign entity confirming its appointment of the beneficiary to the U.S. subsidiary and listing her job responsibilities for the petitioner as:

- Coordinating and improving intercompany relations and communications between the foreign parent company and the U.S. subsidiary;
- Developing workable business objectives and organizational policies under the current economic condition in the U.S. local market;
- Directing and coordinating activities and operation of the U.S. subsidiary;
- Developing adequate U.S. personnel according to its business needs by making critical hiring, dismissing human resource decisions;
- Making and implementing practical business and financial goals for the U.S. operation;
- Proactively defining and establishing sales territories;
- Negotiating office leases, sales contracts, and reviewing financial statements, sales and operating activity reports to measure company productivity and goal achievements;
- Be actively involved in the financial supports and other funding activities of the foreign parent; and.
- Exploring financially viable business opportunities in different industries, i.e. wholesale, food service and real estate, for purpose of expanding and diversifying foreign parent company's investment.

[Bullet points added.]

The petitioner's organizational chart depicted the beneficiary as supervising outside consultants, attorneys, and accountants, as well as the operations manager. The operations manager is depicted as supervising an accountant, a business and marketing specialist, and a service department manager. The service department manager is shown supervising an executive chef and three caterers. The petitioner listed the duties of these individuals and identified all the individuals as working at a managerial, professional, or supervisory level. The petitioner included the Florida Department of Revenue Employer's Quarterly Report (Form UCT-6 Quarterly) for the first, second, and fourth quarters of 2011 and the first quarter of 2012. The first quarter of 2011 depicted three employees, the individual in the position of operations manager, the individual in the position of business and marketing specialist, and the individual in the position of accountant. The second quarter of 2011 showed these same three individuals as the petitioner's employees as well as an individual in the position of caterer. Four other individuals listed on the UCT-6 do not correspond to any of the positions listed on the petitioner's organizational chart. The UCT-6 for the fourth quarter of 2011 listed individuals in the positions of operations manager, executive chef, and two caterers. The eight other individuals listed do not appear on the petitioner's organizational chart. The UCT-6 for the first quarter of 2012 includes individuals in the positions of operations manager, service department manager, executive chef, and three caterers. The other nine individuals are not identified on the petitioner's organizational chart. Three of the nine individuals on the list do not include a corresponding salary. The petitioner also provided a copy of an unsigned lease noting the beneficiary as the intended signer to demonstrate the beneficiary's level of authority in the organization.

Upon review of the limited evidence in the record, the director issued a request for evidence (RFE) instructing the petitioner to submit additional evidence establishing that the beneficiary would be employed in a managerial or executive capacity with the U.S. company.

In a September 13, 2012 letter in response, the petitioner provided the same job description of the beneficiary's duties as initially submitted. The petitioner revised its organizational chart slightly by inserting the executive chef position between that of the service manager and the three caterers. The petitioner also provided copies of 17 Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statement, it had issued for the 2011 year. The W-2s showed the earnings for the 2011 year by position as follows: the operations manager earned \$11,000; the business and marketing specialist earned \$2,700; the accountant earned \$2,700; the executive chef earned \$1,800; and two of the three listed caterers earned \$3,157 and \$1,600 respectively. The individuals who were not identified on the organizational chart earned \$114, \$300, \$450, \$500 (3), \$900, \$1,000, \$1,200, \$1,134, and \$2,200. The petitioner also provided invoices: from an accountant listing fees and services for the September 2011 to July 2012 year of \$2,816; from an attorney for services up to July 2012 as \$10,010; from a management consultant for services in June 2012 of \$2,460.50; and for an unidentified consultant type for services in April and May 2012 for \$1,897.50.

Upon review of the totality of the record, the director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal, counsel for the petitioner asserts that the director's decision is in error. Counsel adds further detail to the description of duties for the beneficiary as previously submitted and avers that the "beneficiary's duties are primarily related to the management of business, and not to producing products, providing services, or performing other non-managerial functions." Counsel contends that the petitioner has supplied payroll records, quarterly wage reports, and IRS Forms W-2 for 17 subordinate employees to establish the petitioner has sufficient organizational complexity to warrant employment of the beneficiary in a primarily executive or managerial capacity. Counsel asserts that the director's decision to the contrary shows the "lack of acumen derived from basic common sense and real world experience in business to fully appreciate what a business executive actually does on [a] daily basis in directing a viable business through his subordinate employees to achieve a broad business objective." Counsel cites several unpublished decisions to support his assertion. Counsel also submits three invoices showing shipment of goods from Los Angeles, California to New York, New York dated October 2012 and a commercial invoice for shipment of goods from China to Carson, California in May and June 2012.

III. Analysis

Upon review of the petition and evidence, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity. In examining the executive or managerial capacity of the beneficiary, United States Citizenship and Immigration Services (USCIS) will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). Published case law clearly supports the pivotal role of a clearly defined job description, as the actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990); *see also* 8 C.F.R. § 204.5(j)(5). That

being said, however, USCIS reviews the totality of the record, which includes not only the beneficiary's job description, but also takes into account the nature of the petitioner's business, the employment and remuneration of employees, as well as the job descriptions of the beneficiary's subordinates, if any, and any other facts contributing to a complete understanding of a beneficiary's actual role within a given entity.

As the director observed, the definitions of executive and managerial capacity 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). The petitioner in this matter identifies the proffered position as primarily a managerial position. Counsel on appeal asserts that the beneficiary performs in both a managerial and executive capacity.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act. If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. Section 101(a)(44)(A)(iii) of the Act.

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. 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 Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988)).

Although counsel on appeal references eligibility for this classification based on both executive and managerial capacity, neither counsel nor the petitioner identifies specific duties as managerial duties or executive duties. As referenced above, the petitioner may not claim to employ a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner chooses to represent the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager. Again, the petitioner has not satisfied either definition in this matter.

The petitioner initially provided a broad overview of the beneficiary's duties. Referencing broadly-cast business objectives such as formulating and implementing policies and procedures, acting as a liaison for the foreign parent company, and reviewing strategic goals and initiatives is insufficient to establish the beneficiary's actual role within the organization. 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, Id.* Likewise, the foreign entity's list of the beneficiary's proposed job responsibilities failed to detail the beneficiary's actual duties. Improving relations between the petitioner and the foreign entity, developing objectives and organizational policies, and coordinating and directing the petitioner's activities and operation are such vaguely described responsibilities that it is not possible to discern the actual daily tasks associated with them.

The few tasks more concretely described by the petitioner suggest that the beneficiary is actively participating in the performance of non-qualifying duties. Duties such as engaging business consultants and identifying business opportunities appear to be the duties of an investor, not an individual primarily engaged in managerial or executive duties. In addition, implementing sales and promotional strategies for the parent company's products and defining and establishing sales territories suggest that the beneficiary is involved in the marketing and sales activity as, at most, a first-line supervisor. Moreover, the record does not include consistent information regarding the beneficiary's duties relating to the negotiation of office leases and sales contracts as the petitioner described the beneficiary as overseeing this activity while the parent company indicated the beneficiary would directly participate in this activity. 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). Furthermore, although the petitioner indicated that the beneficiary had authority to sign leases on the petitioner's behalf and provided a copy of two leases with her name on the signature line, the leases were unsigned.

The petitioner's reiteration of the previously described duties in response to the director's RFE also failed to enlighten as to the specific nature of the beneficiary's duties and her role within the organization. Accordingly, we turn to the remainder of the record to review 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 the business. In that regard, we observe first that the petitioner stated its purpose is to establish a communication and distribution center in Florida on behalf of its Hong Kong parent company to process orders; to establish a new line of investment in Florida bistros; and to operate as a hedging tool to mitigate the exchange rate risks derived from merchandise brokerage activities in multiple currencies. Although the record includes a lease for a restaurant, the record does not include an executed lease or other probative information substantiating that the petitioner has established a communication and distribution center in Florida. Similarly, the general indication that the petitioner will operate as a "hedging tool" is not sufficiently developed in the record. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Moreover, the petitioner's IRS Forms 1065, U.S. Return of Partnership Income for the 2010 and 2011 years, identify the petitioner's business as food services. Further, a review of the petitioner's employees, as set out by its organizational chart and substantiated by its UCT-6 shows the petitioner primarily employed individuals whose titles and job responsibilities relate to the operation of a restaurant. Accordingly, the record shows that when the petition was filed, the petitioner's business was operating a restaurant.

Although the petitioner may have plans to further diversify by investing in other endeavors or assisting its parent company's export business, the record before the director failed to establish the petitioner's business as other than the operation of a restaurant. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). The invoices for what appears to be business or management analysis services rendered in April and May 2012 and in June 2012 are insufficient to establish that the petitioner was engaged in other businesses; rather the invoices confirm the petitioner's business when the petition was filed is operating a restaurant.

Upon review of the positions outlined on the petitioner's organizational chart as well as the descriptions of duties allegedly performed by these individuals, the petitioner has not established the employment of individuals as set out on the organizational chart with documentary evidence. Again without documentary evidence the petitioner has not met its burden of proof. *Matter of Soffici*, *supra*. For example, although the petitioner points out that it paid 17 individuals a salary in the 2011 year, the petitioner fails to identify the positions held by 11 of these individuals. As noted above, the majority of these 11 individuals earned less than \$1,000 for the 2011 year. Accordingly, the 2011 Forms W-2 do not demonstrate that any of these 11 individuals provided services to the petitioner that would relieve the beneficiary from performing operational duties. Upon review of the petitioner's first quarter Form UCT-6 for 2012, the individuals paid a salary include the operations manager, the service department manager, the executive chef, and three caterers. The description of duties for the service department manager, the executive chef, and the three caterers relates to performing the operational services for a restaurant. The record does not support the petitioner's claim that any of these individuals primarily perform supervisory, managerial, or professional tasks.

These individuals, based on their description of duties and time allocated to those duties, primarily perform the necessary tasks to operate the restaurant.

The petitioner provides a broad description of the operations manager's duties. We observe that this individual performs some of the same or similar duties as the beneficiary such as implementing strategic goals, establishing procedures, managing operations, negotiating office leases and financing options, and meeting with outside consultants and legal teams. In addition, the petitioner claims that its operations manager oversees workflow in different departments; however, the petitioner has not established that it has different departments but rather only operates a restaurant. Moreover, upon review of the totality of the petitioner's description of this individual's duties, it is not possible to ascertain what work he actually performs on a daily basis. Accordingly, the description is insufficient to establish that this individual performs primarily managerial or supervisory duties, or duties that can only be performed by an individual with at least a bachelor's degree.

We have also reviewed the invoices from outside consultants. The petitioner does not identify the services rendered by the attorney and the invoice does not specify when the attorney performed the services and whether it was prior to or after the petition was filed. Similarly, the tasks performed by the outside accountant indicate that her services encompassed almost a year of work. Additionally, there is insufficient evidence to demonstrate that this individual relieved the beneficiary from performing the operational tasks associated with budgetary and everyday banking and financial tasks. The invoices from a management consultant and a second unknown type of consultant do not include sufficient probative information demonstrating that these individuals relieved the beneficiary from primarily performing operational tasks. Further, as the services provided are not well-defined it is not possible to conclude that their consulting services required at least a bachelor's degree. Moreover, the record does not demonstrate that the beneficiary spent the majority of her time "supervising" these individuals. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, Id.*

On appeal, the petitioner, through counsel, further breaks down the time allocated to the beneficiary's previously described duties adding more information regarding the beneficiary's duties. However, upon review, the duties added do not relate to the petitioner's actual business activity of operating a restaurant. Again, the record does not include probative evidence that the petitioner was in the import/export business when the petition was filed or was regularly involved in shipments and the foreign entity's supply chain. The three invoices submitted on appeal are insufficient to demonstrate the petitioner's actual role in the shipment of goods from California to New York and from China to California when its headquarters is located in Florida. Again, the petitioner has failed to provide sufficient documentary evidence to establish the nature and scope of its business operations when the petition was filed. *Matter of Soffici, Id.*

Counsel asserts that the director's decision exhibits a lack of knowledge of the actual duties of a business executive. However, in this matter the petitioner has provided a fragmented organizational structure, listed employees that perform duties intermittently or not at all, failed to articulate the duties of the position with concrete detail, failed to provide a probative description of the actual nature of the business when the petition was filed, and failed to support its claims with documentary evidence. As the record does not include sufficient probative, consistent evidence verified with documentary evidence, the petitioner has not established: that the beneficiary primarily directs the

management of the organization as required to establish the position as executive; that the beneficiary primarily supervises and controls the work of other supervisory, professional, or managerial employees as required to establish she is primarily a personnel manager; or that the beneficiary primarily manages an articulated essential. It is insufficient for the purposes of this visa classification to provide a broad position description and depict the proffered position as the highest level on the organizational chart and claim that the beneficiary is eligible. The petitioner must articulate the duties of the proffered position with specificity, provide documentary evidence to support its organizational structure and number of employees, establish the nature of its business when the petition is filed with probative evidence, as well as provide detailed verifiable information establishing how the beneficiary is relieved from performing primarily non-qualifying duties.

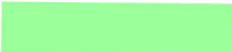
Although counsel cites several unpublished decisions, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. Furthermore, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

The AAO acknowledges that USCIS previously approved an L-1A nonimmigrant petition filed on behalf of the beneficiary, a classification which also requires the petitioner to establish the beneficiary's duties comprise primarily managerial or executive tasks. It must be noted, however, that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava, supra*. Examining the consequences of an approved petition, there is a significant difference between a nonimmigrant L-1A visa classification, which allows an alien to enter the United States temporarily, and an immigrant E-13 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 I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant L-1A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also* 8 C.F.R. § 214.2(l)(14)(i)(requiring no supporting documentation to file a petition to extend an L-1A petition's validity).

Moreover, in making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). In the present matter, the director reviewed the record of proceeding and concluded that the petitioner had not established the beneficiary would be employed in a primarily managerial or executive position. In both the request for evidence and the final denial, the director articulated the objective statutory and regulatory requirements and applied them to the case at hand. If the previous nonimmigrant petition was approved based on the same evidence as submitted in this matter, the previous approval would constitute gross error on the part of the director. Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

IV. Conclusion

The petition will be denied and the appeal dismissed for the above stated reason. In visa petition



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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 the petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.