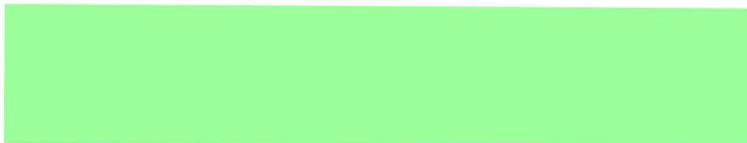




U.S. Citizenship
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Services

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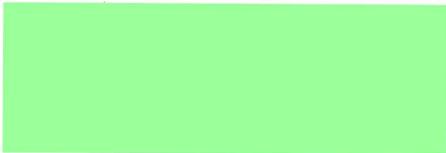


DATE: JUN 04 2013 OFFICE: TEXAS SERVICE CENTER FILE: 

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 is a company incorporated in Delaware in 1989. The petitioner states on the Form I-140, Immigrant Petition for Alien Worker, that its type of business is "wholesale foods." The petitioner indicates that it employs nine personnel, and reported a gross annual income of \$11,000,000 when the petition was filed. It seeks to employ the beneficiary as its marketing manager. 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 November 20, 2012, the director denied the petition determining that the petitioner failed to establish that it will 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 will be employed in a primarily managerial or executive capacity.

With regard to the proffered position, the petitioner initially provided a list of "Principal Accountabilities" for its marketing manager as follows:

1. Assist in developing and managing the Trade Activity for the various Customers and Customer Segments.
 - a. Restaurant depot – meetings and packaging development e.g. vegetable spring rolls (HK and US)
2. Manage the various aspects of Marketing Materials (i.e. Brochures, Marketing Communications, Advertising, etc.).
 - a. Brochure, new product e.g. Entrée print etc. from concept to photo taking to printing
3. Assist in the on-going product renovation projects.
 - a. Shaomai packaging change, crispy spring roll
4. Develop and manage the criteria for our current and future Co-packers, including new product development and Food Safety Programs.
 - a. Set up system and keep tracking on record and compliance
 - b. Development
5. Work with the Sales Team to develop new product ranges and product line extensions within our current categories.
 - a. Understand the market
 - b. Assist
6. The position will be the bridge between [the petitioner] and [redacted] related to the utilization of the HK Marketing and Artwork Departments. [The petitioner] can benefit by utilizing some of the experience within our own Company.
7. Technical Support-The position will support the Sales Team in the pursuit of Key Accounts, by providing product and Marketing support. There will be particular emphasis on the National Key Account Segment.
 - a. Understand the market
 - b. Assist business development in San Francisco
8. Sales Responsibility-To be determined. Ideally, the Marketing Manager position will manage one or two markets. The responsibilities will include managing the broker sales team, developing the strategy for the particular market(s), manage the A7P for the market(s) and train/work with the broker sales personnel. This area of responsibility is designed to provide the Marketing Manager position with exposure and experience related to market and broker management.

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 will be employed in a managerial or executive capacity with the U.S. company.

In an October 12, 2012 letter in response, the petitioner indicated that the beneficiary had worked for the petitioner since September 2009 and that she currently holds the position of senior marketing manager.¹ The petitioner noted that the beneficiary's responsibilities since that time are as follows:

- [The beneficiary] has full responsibility for all Marketing and Trade Promotion activity of the company, reporting directly to the President/CEO.
- She has responsibility for managing the [petitioner's] Regional Manager Team, which consists of 4 individuals, in all areas related to Marketing and Trade Promotion Activity. She is responsible for overseeing, coaching, evaluating and managing the Regional Manager's planning and execution of said plans. The Regional Managers are responsible for managing our Sales and Marketing organizations in the top 30 U.S. markets. [The beneficiary] has the authority to recommend the hiring or termination of the Regional Team members as part of her responsibility. These responsibilities account for approximately 55% of her time.
- She directly manages our broker sales team for the Hawaii market, which includes the hiring and firing of this sales organization if necessary. The Hawaii broker organization consists of 6 employees who are responsible for all sales and marketing activities in the Hawaii market. The Hawaii market accounts for approximately 25% of her time.
- [The beneficiary] has responsibility for creating the Annual Marketing Plan for the North America Market. The plan includes the Sales direction, product focus including new product development and Trade activity. This activity accounts for approximately 10% of her time.
- She is directly responsible for all new product development and food safety, overseeing those activities within the various manufacturing locations. This accounts for approximately 10% of her time.

The petitioner also included its organizational chart depicting the beneficiary as reporting directly to the president/CEO and supervising four regional managers. The petitioner provided copies of its 2011 Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statement for three of the four individuals listed on the organizational chart as regional managers.

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.²

On appeal, counsel for the petitioner asserts the director's decision is in error. Counsel notes that the beneficiary is employed as the petitioner's senior marketing manager. Counsel contends that the sales and marketing department is the petitioner's most important component as it is in the business of distributing food products from its parent company in Hong Kong to U.S. distributors. Counsel reiterates that the beneficiary has complete control of this department and answers only to the

¹ The petitioner did not explain the difference in the job title for the proffered position.

² The director's decision includes what appears to be a typographical error in the initial paragraph referencing the proffered position as that of a "restaurant" manager. The error does not impact the director's analysis of the evidence in this matter and thus is harmless.

petitioner's president/CEO. Counsel repeats the initial description of the beneficiary's duties and asserts that the beneficiary is responsible for the oversight and management of four direct subordinates. Counsel avers that the beneficiary has the authority to hire, fire, promote or demote any of the four regional managers she supervises. Counsel asserts that the beneficiary provides instructions to the regional managers to facilitate the resolution of customer problems, she approves special orders, customers' return/exchanges, and she authorizes customer incentives. Counsel further contends that the four regional manager positions are professional positions whose duties are primarily managerial. The petitioner provides a statement indicating that three of the regional managers hold bachelor's degrees and that one holds an associate's degree. The petitioner states that the regional managers were hired because of their advanced education and extensive food service management experience.

The petitioner also provides a job description for its regional sales manager position, the position subordinate to the beneficiary's position. The job description outlines the regional sales managers' duties as managing the broker sales team personnel for the specific market, regularly visiting each geographic market to include ongoing sales and marketing training related to the petitioner's product portfolio, developing and maintaining relationships with regional and national accounts, working with the broker sales teams to develop and secure new operator accounts, and provide support in the areas of product knowledge along with menu and recipe application. Counsel explains that the beneficiary's four subordinates are assigned to four specific regions in the United States and that each regional manager oversees approximately six different broker sales teams within their region. Counsel asserts that each of these broker sales teams comprise ten to thirty or more members and thus the beneficiary is overseeing the work of hundreds of people by directly managing the four regional managers. The record includes a list of accounts for each of the regional sales managers and the sales structure for two of the listed accounts.

Counsel further asserts that the director placed undue emphasis on the size of the petitioner's organization. Counsel references section 101(a)(44)(C) of the Act requiring United States Citizenship and Immigration Services (USCIS) to take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function. Counsel also cited two unpublished decisions in support of his assertion that the director did not properly consider these factors.³

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, USCIS will look first to the petitioner's description of the job

³ Counsel states that the petitioner is a relatively new business having incorporated in 2009 for the purpose of distributing food products manufactured by the parent company. However, the record includes the petitioner's Articles of Incorporation initially filed in June 1989, a Certificate of Amendment dated July 9, 1990, and a second Certificate of Amendment dated November 24, 1992. The record also includes a copy of a stock certificate issued to the petitioner's parent company in 2009 for 100 shares. There is no evidence establishing who holds the petitioner's remaining shares, if any are outstanding. The record does not provide information regarding the petitioner's business prior to 2009.

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.

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)).

The petitioner initially provided a broad overview of the beneficiary's duties. The job description focused on the beneficiary's performance of certain tasks, such as assisting in the development and management of the trade activity on various customer accounts, as well as managing marketing

materials and assisting in the renovation of packaging. The petitioner noted that the beneficiary would be a bridge between the petitioner and foreign entity's marketing and artwork departments. The petitioner's initial description identified the beneficiary's relationship with the sales team as "technical support" indicating that she would work with the sales team to develop new product ranges and product lines. The petitioner further indicated that "ideally the beneficiary would be responsible for managing one or two particular markets and training and working with broker sales personnel." The petitioner did not identify the beneficiary's position as a supervisory or personnel managerial position in its initial job description focusing instead on the beneficiary's performance of operational tasks.

For example, providing technical support to the petitioner's sales team is not indicative of an individual managing or supervising the petitioner's sales team; rather it appears that the beneficiary would be providing some sort of administrative or technical support. In addition, stating that the beneficiary ideally would also manage broker sales personnel in a particular market is insufficient to establish that the tasks associated with such a duty is a managerial or supervisory task. The petitioner does not identify the broker sales personnel and does not indicate that these individuals are employed by the petitioner or are otherwise contractually bound to the petitioner. Rather, it appears that the broker sales personnel are clients who distribute the petitioner's products. The record does not include documentary evidence establishing that these clients are subject to the petitioner's control. 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)). At most, the broker sales personnel appear to be part of organizations which enjoy an arm's length relationship with the petitioner. Moreover, the petitioner has not explained how the services of the broker sales personnel or organizations obviate the need for the beneficiary to primarily conduct the operations of the petitioner's food product distribution business.

In response to the director's RFE, the petitioner amended the beneficiary's previous job description and job title. The petitioner referred to the beneficiary's position as that of a "senior marketing manager" not the heretofore marketing manager. 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). The petitioner noted that the beneficiary would spend 55 percent of her time managing the petitioner's four regional managers. The petitioner indicated that the beneficiary would spend an additional 25 percent of her time directly managing the broker sales team for the Hawaii market. The petitioner allocated only 20 percent of the beneficiary's time to creating a marketing plan and overseeing activities within various manufacturing locations for product development and food safety. In sum, the initial description appeared to have the beneficiary doing more of the actual work, while the second iteration of the job has the beneficiary in a senior marketing manager position and primarily (55 percent) managing the four regional managers in the petitioner's operation.

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). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities.

The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position, but rather added new generic duties to the job description.

However, even if considering the revised position description, the beneficiary's direct sales duties related to the management of the Hawaii accounts are non-qualifying duties as discussed above. The petitioner has not explained how the management of particular accounts of unrelated personnel or organizations constitutes a managerial or supervisory duty. The beneficiary's tasks identified as relating to marketing (brochures, advertising, packaging and utilizing the foreign entity's marketing and artwork departments) are also non-qualifying as the petitioner does not identify any other individuals within its organization who perform these tasks, thus relieving the beneficiary from the performance of these duties. Although the petitioner revised the beneficiary's job description to include 55 percent of her time managing the four regional sales managers in response to the RFE, the petitioner has not established the beneficiary is actually supervising and controlling the work of other supervisory, professional, or managerial employees.

The petitioner has not established that the four regional sales managers actually perform supervisory or managerial duties. Again, the petitioner does not provide documentary evidence of the contractual or other relationship connecting the independent broker sales organizations to the petitioner. The regional sales managers, although regularly visiting each geographic market to promote, market, and sell the petitioner's product portfolio, as well as provide support in the areas of product knowledge along with menu and recipe application to current and new operator accounts, do not have duties that are inherently supervisory or managerial. Providing the names of the organizations that have "accounts" with the petitioner on appeal does not reveal the actual relationship between the petitioner and the independent organizations. The petitioner, again, has not provided evidence that the duties of a regional sales manager include supervisory or managerial duties rather than the daily sales, promotion, and marketing of the petitioner's products to organizations that ultimately distribute the products to retailers, restaurants, or other entities.

On appeal, counsel now avers that the four regional sales managers are professional employees. However, when evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by the subordinate employee. The petitioner's claim that three of the regional sales managers possess a bachelor's degree does not automatically lead to the conclusion that these employees are employed in a professional capacity as that term is defined above. In the instant matter, the petitioner has not, in fact, established that a bachelor's degree is actually necessary, for example, to perform the promotion and sales of its food products. A review of the job description provided for this position on appeal does not reveal that the duties require advanced knowledge in a given field rather than the skill common to successful sale personnel. The petitioner has not established that the beneficiary supervises professional employees. At most, considering the petitioner's organizational chart, the nature of the petitioner's business, and the general job descriptions provided, the beneficiary performs the routine tasks of a first-line supervisor of non-professional employees.

The petitioner also fails to establish that the proposed position will be responsible for managing an essential function. The petitioner does not identify the function with specificity. We observe again, that the petitioner initially described the position as providing technical support to the petitioner's sales team, performing the tasks related to sales in a particular market, serving as a bridge between the foreign entity's marketing and artwork department, handling marketing materials such as brochures and packaging development, and setting up and monitoring food safety programs. Such generic duties appear to relate to routine operational tasks. In response to the director's RFE, the petitioner allocated 55 percent of the beneficiary's time to supervising personnel. The petitioner's revision of the beneficiary's duties in response to the director's RFE, while inconsistent with the initial description and thus not probative, further undermined any claim that the beneficiary would be managing an essential function. Moreover, as discussed above, the petitioner's job descriptions demonstrate that the beneficiary's daily duties involved the performance of the petitioner's marketing and sales tasks rather than managing a function.

In summary, based on the record of proceeding, the beneficiary's job duties are principally composed of non-qualifying duties that preclude her from functioning in a primarily managerial or executive role. 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. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988).

We acknowledge counsel's concern regarding the size of the petitioner and recognize that as required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. To establish that the reasonable needs of the organization justify the beneficiary's job duties, the petitioner must specifically articulate why those needs are reasonable in light of its overall purpose and stage of development. In the present matter, the petitioner has not explained how the reasonable needs of the petitioning enterprise justify the beneficiary's performance of non-managerial or non-executive duties. 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, supra*. In addition, counsel's reference to unpublished decisions in support of his assertions is not persuasive. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. 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.

Furthermore, the reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. See sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). The reasonable needs of the petitioner may justify a beneficiary who allocates 51 percent of her duties to managerial or executive tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties. In this matter, under either iteration of the descriptions of the beneficiary's duties, the petitioner has failed to provide sufficient evidence to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity. Accordingly, the instant petition cannot be approved. For this reason, the appeal will be dismissed.

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 clearly articulated the objective statutory and regulatory requirements and applied them to the case at hand. If the previous nonimmigrant petition(s) was approved based on the same evidence as submitted in this matter, the previous approval(s) 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 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.

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Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.