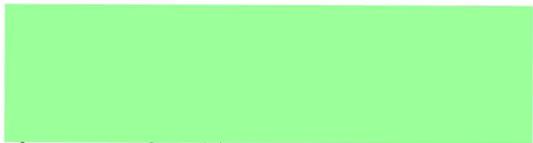
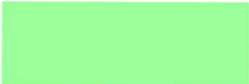




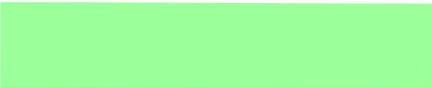
U.S. Citizenship  
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(b)(6)



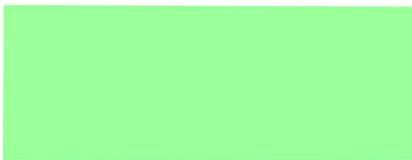
FILE:  Office: TEXAS SERVICE CENTER Date:

JUN 10 2013

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:

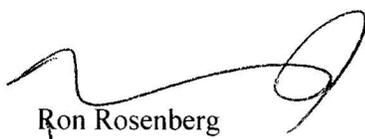


INSTRUCTIONS:

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The petitioner is a real estate investment company organized in the State of Texas. It seeks to employ the beneficiary as its president and chief executive officer. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

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

On appeal, counsel for the petitioner contends that the director erred in denying the petition based on the small size of the company. Counsel asserts that the beneficiary manages and directs not only staff, but the company's central function, and that the majority of his duties fall within the statutory definition of a "manager" or "executive."

### I. The Law

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

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

\* \* \*

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

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

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement that indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien. *See* 8 C.F.R. § 204.5(j)(5).

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. Facts

At issue in the present matter is whether the beneficiary would be employed in a primarily managerial or executive capacity in the United States.

In a letter accompanying the Form I-140, Immigrant Petition for Alien Worker, the petitioner stated that as president/CEO of the company, the beneficiary would "plan, direct and coordinate operational activities at the highest level of management." The petitioner further claimed that the beneficiary's tasks at the U.S. company "would not be much different from his responsibilities at the overseas company," which the petitioner described as:

- Analyze operations to evaluate performance of a company and its staff in meeting objectives
- Determine areas of potential cost reduction, program improvement or policy change
- Directing, planning and implementing policies, objectives and activities of organizations or businesses in order to ensure continuing operations, to maximize returns or investments and to increase productivity.
- Direct and coordinate an organization's financial and budget activities in order to fund operations, maximize investments, and increase efficiency.
- Confer with board members, organization officials, and contractors/staff members to discuss issues, coordinate activities, and resolve problems.
- Prepare budgets for approval, including those for funding and implementation of programs.
- Direct and coordinate activities of businesses or departments concerned with production, pricing, sales, and/or distribution of products.
- Negotiate or approve contracts and agreements with suppliers, distributors, federal and state agencies, and other organizational entities

The petitioner claimed that it employed between 2 and 10 full-time employees, depending on the company's needs.

On April 30, 2009, the director issued a request for further evidence (RFE) to demonstrate that the beneficiary's employment in the United States qualifies under all criteria for a manager or executive. The director requested evidence of staffing levels in the United States, including position title, duties, educational level and IRS Forms W-2 for all employees.

In a response dated May 29, 2009, counsel for the petitioner asserts that the beneficiary is an executive and not a manager. A letter of the same date from the petitioner included the following description of the beneficiary's job responsibilities in the United States:

He spends 80% of his time to plan, direct and coordinate operational and marketing activities at the highest level of management with the help of subordinate staff managers. To analyze operations to evaluate performance of the company and its staff in meeting objectives, and to determine areas of potential cost reduction, program improvement or policy change. [The beneficiary] exercises wide latitude in discretionary decision making. The remaining 20% is spent on time with clients [and] their needs and further development of the foreign company.

The organizational chart the petitioner submitted shows the beneficiary as president/CEO of the company. Directly below the beneficiary is an individual (identified elsewhere in the record as the beneficiary's spouse) in the position of director, and below her, the chart lists a bookkeeper, accountants, "major contractors," "various subcontractors," and [REDACTED]

Aside from the organizational chart, the petitioner did not provide any of the requested information regarding its employees. The petitioner's corporate tax returns did not list any amount for wages or salaries paid to employees in 2007, and listed an amount of \$20,686 for the year 2006. The petitioner submitted a list of contractors, stating their names, contact details, and the type of services they provide. No documentation was provided regarding the duration or amount of work they performed for the company, nor did the petitioner provide evidence of payments made to contractors.

On August 1, 2009, the director denied the petition, concluding that the petitioner had not established that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity. Specifically, the director noted that the organizational chart indicates that the beneficiary supervises "5 employees including contractors and subcontractors." The director found that "[g]iven the limited staffing level of [the company] ... it can only be concluded that the bulk or primary part of the beneficiary's proposed job assignment in the United States will be outside the scope of the 'executive' or 'managerial' capacities as defined."

On appeal, counsel contends that "a managerial position in this context does not necessarily require management of staff, and that management of a *function* is sufficient." Counsel asserts that, in any event, the beneficiary does manage staff, and does have the authority to hire and fire. Counsel argues that "whether a person is acting in an executive or managerial capacity should not be determined merely on the basis of the number of workers supervised." Counsel asserts that, although the petitioner does not employ a large number of workers, its operations currently include some 22 properties for which "there are multiple renovation, leasing and sales projects active at any given time."

Counsel claims that it is the beneficiary's "executive responsibility" to make decisions regarding the acquisition and disposition of properties, to negotiate financing, "to coordinate and direct the renovation, leasing, management, and sale" of these properties, rather than to be "actually involved in the day to day work of the company, such as home renovation work, or showing properties to

potential renters/buyers." Returning to the "managerial capacity" argument, counsel again claims that the beneficiary "manages and directs not only staff, but the organization's central *function*" and, therefore, the majority of the beneficiary's duties "do in fact fall within the 'executive' or 'managerial' definitions.

### III. Analysis

Upon review, the petitioner has failed to establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* Beyond the required description of the job duties, the U.S. Citizenship and Immigration Services (USCIS) reviews the totality of the record when examining the beneficiary's claimed managerial or executive capacity, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

Further, it is noted that the definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that the beneficiary's duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act.

In reviewing the record, the AAO finds that the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis in his position in the U.S. company. In the letter submitted with the Form I-140, the petitioner provided a nonspecific job description for the position of president/CEO of a generic company rather than providing a description of the beneficiary's actual job duties within the context of the U.S. company's actual business operations. For example, the petitioner listed tasks such as, "analyze operations to evaluate performance of a company and its staff in meeting objectives"; "directing, planning and implementing policies, objectives and activities of organizations or businesses in order to ensure continuing operations, to maximize returns or investments and to increase productivity"; "direct and coordinate an organization's financial and budget activities in order to fund operations, maximize investments, and increase efficiency"; and "confer with board members, organization officials, and contractors/staff members to discuss issues, coordinate activities, and resolve problems." The petitioner's description appears to refer to a generic company or organization, to board members and "organization officials" not described in the record, and to

company "objectives," "policies," and "activities" that have not been specifically identified. 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 response to the RFE, the petitioner claimed that the beneficiary uses 80% of his time to "plan, direct and coordinate operational and marketing activities at the highest level of management with the help of subordinate staff managers" and to "analyze operations to evaluate performance of the company and its staff in meeting objectives, and to determine areas of potential cost reduction, program improvement or policy change." Again, this description fails to provide the level of detail or specificity necessary to determine the beneficiary's actual activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The AAO must also question the credibility of the petitioner's claim that the beneficiary "plan[s], direct[s] and coordinate[s] operational and marketing activities at the highest level of management *with the help of subordinate staff manager*," or that he "analyze[s] operations to evaluate performance of the company *and its staff*" [emphasis added] when, as discussed further below, there is no evidence that the petitioner has any regular staff or personnel other than the beneficiary. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Further, the record does not support the petitioner's claim that the beneficiary has a staff, or as the petitioner claimed, "subordinate staff managers," to assist him with the day-to-day operations of the company. On the Form I-140, the petitioner claimed to have 10 employees, and in the letter submitted with the initial petition, the petitioner stated that it has "2-10 full-time employees, depending on the company's needs." However, the petitioner failed to provide the additional evidence requested by the director relating to its staff, such as the job duties, educational level and W-2 forms for each employee. The organizational chart submitted in response to the RFE listed only the names and position titles of the staff, and did not disclose the employees' job duties, educational level and W-2 Forms, or any alternative evidence of payment of salaries or wages. The evidence requested is critical in that it would have established the petitioner's staffing level, and whether the staffing is sufficient to relieve the beneficiary from the non-qualifying, operational tasks of the company.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). For this reason alone, the petition must be denied.

In addition, the AAO notes that on its 2007 corporate tax return, the petitioner did not state an amount of salaries and wages paid to employees. On its 2006 tax return, the company reported paying \$20,686 in salaries and wages, which amounts to less than what the beneficiary alone would have been paid, based on his salary as disclosed on the Form I-140. Thus, the evidence does not support the petitioner's claim that the company employed any full-time employee other than the beneficiary during the years 2006 and 2007, nor was there evidence regarding staff remuneration in the year 2008 when the petition was filed. In the absence of evidence that the company actually had other employees on its payroll at the time the petition was filed, the AAO must question who other than the beneficiary would be responsible for the sales, marketing, contract negotiation, quoting, invoicing, and other administrative and non-managerial tasks associated with the day-to-day operations of the company. If the beneficiary was primarily performing such tasks, he cannot be considered to be "primarily" employed in a managerial or executive capacity at the time the petition was filed. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

We acknowledge that the petitioner claims to utilize a number of contractors and subcontractors, and has attached a list of such individuals or organizations in response to the RFE. However, the petitioner has failed to provide any specific details regarding the scope of services provided for the company by such contractors, or any evidence of the remuneration they received from the company. Additionally, the petitioner has not explained how the services of the contracted employees obviate the need for the beneficiary to primarily conduct certain administrative and operational tasks associated with the petitioner's day-to-day business. Without documentary evidence to support its statements, the petitioner does not meet its burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Given the deficiencies in the evidence discussed above, the AAO does not find persuasive the petitioner's claim that the beneficiary functions in an executive capacity in the U.S. company. 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. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* As discussed above, the petitioner has provided job descriptions that are too vague and lacking in detail to support a conclusion that the beneficiary's position meets the criteria set forth in the statutory definition of "executive capacity." 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*, 22 I&N Dec. at 165.

Further, inherent to the definition of "executive capacity," 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. Again, as discussed above, the evidence is insufficient to show that, at the time of filing the petition, the beneficiary actually directs a subordinate level of managerial employees, or indeed any subordinate employees at all, who would relieve him from direct involvement in the company's day-to-day operations. An individual will not be deemed an executive under the statute simply because he has an executive title or because he "directs" the enterprise as the owner or sole managerial employee.

The AAO also does not find persuasive counsel's claim that, alternatively, the beneficiary should be considered to be functioning in a managerial capacity. Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* section 101(a)(44)(A)(ii) of the Act. Again, the evidence is insufficient to show that there were actually persons other than the beneficiary in the company's employ at the time the petition was filed. Even assuming that the petitioner's claim regarding the number of employees on its staff could be verified, the petitioner has failed to provide any evidence demonstrating that any of the beneficiary's claimed subordinates actually function in a managerial or supervisory capacity, other than in title. The petitioner has also failed to provide any evidence of the level of education required for any of the positions below the beneficiary. Without such information, it cannot be determined whether any of these subordinate employees qualify as a "professional." As such, the record is insufficient to show that the beneficiary supervises any supervisory, professional, or managerial employees, as required by section 101(a)(44)(A)(ii) of the Act.

On appeal, counsel claims that the beneficiary qualifies for the beneficiary sought as a function manager. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. §1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation.

If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 204.5(j)(5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. Again, the description of the beneficiary's position lacks specificity with regards to duties to be performed and percentage of time to be spent on each duty. Nor has the petitioner or counsel sufficiently articulated an essential function that the beneficiary would be managing. As such, the evidence does not establish that the beneficiary could be considered a function manager.

Finally, the AAO acknowledges that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family Inc. v. U.S. Citizenship and Immigration Services* 469 F. 3d 1313, 1316 (9<sup>th</sup> Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d. 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990)(per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when USCIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

The AAO does not conclude that the beneficiary is engaged in the property remodeling, maintenance repair and renovation work associated with the petitioner's real estate investment and property management business. However, there are other non-managerial tasks associated with the business's day-to-day operations, such as sales, marketing, bookkeeping, research, invoicing, licensing and other administrative and operational functions. The petitioner has not established that its regular staff includes anyone other than the beneficiary, and has not provided evidence of payments to its claimed contractors. Therefore, there is sufficient basis to conclude that the petitioner has a reasonable need for the beneficiary himself to become involved in these non-qualifying activities.

Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) of the Act. As discussed above, the petitioner has not established this essential element of eligibility.

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

#### **IV. Overseas Employment**

Beyond the decision of the director, the AAO finds that the record is also insufficient to establish that the beneficiary was employed abroad in a managerial or executive capacity.

Section 203(b)(1)(C) of the Act requires the petitioner to establish that "in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, the alien has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof."

In the initial petition, the petitioner claimed that prior to transferring to the United States, the beneficiary was president/CEO of [REDACTED] company that wholly owns the U.S. company. According to the petitioner, the beneficiary's job duties overseas were similar to those he performs in the U.S. company, and the job descriptions cited earlier in this decision purportedly also describe the beneficiary's job duties overseas. As such, the information provided with respect to the beneficiary's overseas job duties suffers from the same vagueness and deficiencies as the descriptions of the beneficiary's U.S. job duties, as fully discussed above, and similarly fails to establish that the beneficiary was primarily employed in a managerial or executive capacity in his position abroad.

Further, the AAO notes that in the RFE, the director also requested that the beneficiary provide further evidence to establish that the beneficiary's employment abroad qualifies as managerial or executive, including an organizational chart and "the names of all departments, teams and employees, their titles, and a description of their job duties." In response, the petitioner provided only an organizational chart with the beneficiary and his wife, each listed as a director/member, and below them, two managers, two "day time staff" positions, a "night time staff" position, and "various subcontractors." No further information relating to the overseas employees or contractors were provided. Thus, the petitioner has failed to fully address the director's request for evidence.

Again, the failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Further, for the same reasons enumerated earlier with respect to the beneficiary's U.S. position, absent sufficient evidence relating to the beneficiary's subordinate staff overseas, the AAO cannot determine whether the beneficiary had any subordinate employees to relieve him of non-qualifying duties, such that he could be deemed to have functioned in a primarily managerial or executive capacity in his position abroad.

In light of the foregoing, the AAO finds that the record is insufficient to establish that the beneficiary was employed abroad in an executive or managerial capacity, as required by the statute. For this additional reason, the petition will be denied.

## V. Conclusion

Finally, the AAO acknowledges that USCIS has previously approved L-1A nonimmigrant petitions filed by the petitioner on behalf of the instant beneficiary. It must be noted 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; *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22; *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103. 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). Despite the 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. Based on the lack of required evidence of eligibility in the current record, the AAO finds that the director was justified in departing from the previous nonimmigrant petition approvals by denying the instant petition.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

**ORDER:** The appeal is dismissed.